

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
Sep 11 2020 04:30 p.m.
Dist. Ct. Case No: A-18-781084-B Elizabeth A. Brown
Clerk of Supreme Court

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Declaration of Robert Dziubla in Support of Defendant Las Vegas Development Fund LLC’s Motion for Appointment of Receiver <i>[redacted in district court filing]</i> (02/06/2019)	II / III	0379-0558
Defendant and Counter Claimant LVDF’s Objections to Plaintiff and Counter Defendant’s Statement of Undisputed Facts (02/03/2020)	XIII	3167-3222
Defendant and Counterclaimant Las Vegas Development Fund, LLC’s Notice of Motion and Motion for Leave to Amend the Countercomplaint <i>[redacted in district court filing]</i> (04/03/2020)	XIV / XV	3442-3640
Defendant and Counterclaimant LVD Fund’s Opposition to Counterdefendant Jennifer Piazza’s Motion for Summary Judgment <i>[redacted in district court filing]</i> (02/03/2020)	XIII	3223-3239
Defendant and Counterclaimant LVD Fund’s Opposition to VNV Dynasty Trust I and VNV Dynasty Trust II’s Motion for Summary Judgment <i>[redacted in district court filing]</i> (02/03/2020)	XIII / XIV	3240-3256
Defendant EB5 Impact Advisors LLC’s Opposition to Plaintiff’s Motion for Sanctions (09/30/2019)	IX	2030-2040
Defendant Las Vegas Development Fund LLC’s Motion for Appointment of Receiver and Request for Order Shortening Time (02/06/2019)	II	0351-0378

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Defendant Las Vegas Development Fund, LLC’s
Motion for Clarification on Order Shortening Time
(05/01/2020) XVII 4007-4016

Defendant Las Vegas Development Fund LLC’s
Opposition to Motion to Seal and/or Redact portions
of Defendants’ Oppositions to Jennifer Piazza and
the NVN Trusts’ Motions for Summary Judgment to
Protect Confidential Financial Information
(02/14/2020) XIV 3369-3380

Defendant Las Vegas Development Fund, LLC’s
Opposition to Plaintiff’s Second Motion for
Temporary Restraining Order and Preliminary
Injunction (03/19/2019) IV 0837-0860

Defendant Las Vegas Development Fund LLC’s
Reply to Plaintiff’s Opposition to Defendant’s
Motion for Appointment of Receiver (02/26/2019) III / IV 0741-0755

Defendants’ Answer to Plaintiff’s Second Amended
Complaint and Counterclaim (04/23/2019) IV / V 0917-1083

Defendants’ Answer to Plaintiff’s Second Amended
Complaint and First Amended Counterclaim
[redacted in district court filing] (06/04/2020) XVII / XVIII 4073-4262

Defendants’ Opposition to Plaintiff’s Motion to
Quash Subpoenas to Third Parties Bank of America
and Lucas Horsfall, Murphy & Pindroh, LLP
(11/6/2019) X / XI 2479-2655

Errata to Opposition to Defendant Las Vegas
Development Fund LLC’s Motion for Appointment
of Receiver (02/22/2019) III 0731-0740

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Errata to Supplemental Declaration of Robert Dziubla in Support of Defendants’ Opposition to Plaintiff’s Second Motion for Temporary Restraining Order and Preliminary Injunction (03/20/2019)	IV	0882-0892
Minutes of the Court (08/26/2020)	XVIII	4387-4389
Motion for Summary Judgment as to the Counterclaims Against Jennifer Piazza (01/23/2020)	XIII	3144-3166
Motion for Summary Judgment as to the Counterclaims Against VNV Dynasty Trust I and VNV Dynasty Trust II (01/23/2020)	XIII	3096-3143
Motion to Seal and/or Redact Pleadings and Exhibits to Protect Confidential Information, Motion to Amend Paragraph 2.3 of Protective Order, Motion for Order Shortening Time and Order Shortening Time (02/15/2019)	III	0602-0628
Motion to Seal and/or Redact Portions of Defendants’ Oppositions to Jennifer Piazza and the VNV Trusts’ Motions for Summary Judgment to Protect Confidential Financial Information, Motion for Order Shortening Time and Order Shortening Time (02/11/2020)	XIV	3331-3348
Notice of Entry of Disclaimer of Interest of Chicago Title Company and Stipulation and Order for Dismissal (02/05/2019)	II	0344-0350
Notice of Entry of Findings of Fact and Conclusions of Law and Order Granting In Part and Denying In Part Defendants’ Motion for Protective Order Regarding Discovery of Consultants and Individual Investors Confidential Information (07/06/2020)	XVIII	4334-4342

1	Notice of Entry of Findings of Fact, Conclusions of	XIII	3081-3091
2	Law, and Order Denying Defendant Las Vegas		
3	Development Fund LLC’s Motion to Dissolve		
4	Temporary Restraining Order and to Appoint a		
5	Receiver (01/23/2020)		
6	Notice of Entry of Findings of Fact, Conclusions of	XVIII	4269-4275
7	Law and Order Denying Plaintiff Front Sight		
8	Management, LLC’s Motion to Extinguish LVDF’s		
9	Deed of Trust, or Alternatively to Grant Senior Debt		
10	Lender Romspen a First Lien Position, and Motion		
11	to Deposit Funds Pursuant to NRCP 67 (06/08/2020)		
12	Notice of Entry of Order (03/19/2019)	IV	0876-0881
13	Notice of Entry of Order (04/10/2019)	IV	0893-0897
14	Notice of Entry of Order (04/10/2019)	IV	0898-0903
15	Notice of Entry of Order (04/10/2019)	IV	0904-0909
16	Notice of Entry of Order (04/10/2019)	IV	0910-0916
17	Notice of Entry of Order (05/16/2019)	V	1084-1089
18	Notice of Entry of Order (06/25/2019)	VI	1318-1324
19	Notice of Entry of Order (12/18/2019)	XII	2837-2840
20	Notice of Entry of Order (01/17/2020)	XII	2867-2874
21	Notice of Entry of Order (02/07/2020)	XIV	3327-3330
22	Notice of Entry of Order (03/02/2020)	XIV	3412-3416
23	Notice of Entry of Order (03/03/2020)	XIV	3417-3421
24	Notice of Entry of Order (03/12/2020)	XIV	3422-3429
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Notice of Entry of Order (04/01/2020)	XIV	3430-3436
Notice of Entry of Order (04/01/2020)	XIV	3437-3441
Notice of Entry of Order (04/28/2020)	XVI	3892-3896
Notice of Entry of Order Admitting to Practice (11/15/2018)	I	0064-0068
Notice of Entry of Order Denying Counter Defendant Jennifer Piazza’s Motion for Summary Judgment (06/08/2020)	XVIII	4288-4293
Notice of Entry of Order Denying Counter Defendants VNV Dynasty Trust I and VNV Dynasty Trust II’s Motion for Summary Judgment (06/08/2020)	XVIII	4282-4287
Notice of Entry of Order Denying Front Sight Management LLC’s Motion for Partial Summary Judgment With Findings of Fact and Conclusions of Law (06/22/2020)	XVIII	4318-4327
Notice of Entry of Order Denying Plaintiff’s Motion for Sanctions Related to Defendant EB5IA’s Accounting Records (12/19/2019)	XII	2854-2860
Notice of Entry of Order Denying Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction related to Investor Funds and Interest Payments (09/13/2019)	VII	1585-1591
Notice of Entry of Order Denying Plaintiff’s Motion to Quash Subpoenas to Morales Construction, Top Rank Builders and All American Concrete and Masonry (12/19/2019)	XII	2847-2853

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Notice of Entry of Order Denying Plaintiff’s Motion to Quash Subpoenas to Plaintiff’s Bank and Accountant (12/6/2019)	XII	2817-2822
Notice of Entry of Order Denying Plaintiff’s Motion to Quash Subpoenas to Summit Financial Group and US Capital Partners, Inc. (06/08/2020)	XVIII	4276-4281
Notice of Entry of Order Denying Plaintiff’s Motion to Stay Enforcement of Order Denying Plaintiff’s Motion to Quash Subpoenas to Bank of America and Lucas Horsfall (01/02/2020)	XII	2861-2866
Notice of Entry of Order Denying Without Prejudice Plaintiff’s Motion for Sanctions for Violation of Court Orders Related to Defendants Responses to Plaintiffs Requests for Production of Documents to Defendants (07/06/2020)	XVIII	4343-4349
Notice of Entry of Order Granting Defendant and Counterclaimant Las Vegas Development Fund, LLC’s Notice of Motion and Motion for Leave to Amend the Countercomplaint (06/04/2020)	XVII	4068-4072
Notice of Entry of Order Granting Defendant Las Vegas Development Fund, LLC’s Motion for Clarification on Order Shortening Time (06/05/2020)	XVIII	4263-4268
Notice of Entry of Order Granting Defendant’s Motions to Quash Plaintiff’s Subpoenas to Non-Party Banks (12/6/2019)	XII	2794-2800
Notice of Entry of Order Granting Defendants’ Motion for Protective Order Regarding the Defendants’ Private Financial Information (07/10/2020)	XVIII	4350-4356

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Notice of Entry of Order Granting Defendants’ Motion to Advance Hearing regarding Plaintiff’s Motion to Quash Subpoenas (11/08/2019)	XI	2656-2660
Notice of Entry of Order Granting in Part and Denying in Part Counterdefendants’ Motions to Dismiss Counterclaim (09/13/2019)	VII	1578-1584
Notice of Entry of Order Granting in Part and Denying in Part Defendants’ Motions to Quash Plaintiff’s Subpoenas to Non-Parties Empyrean West, Jay Carter and David Keller (12/6/2019)	XII	2786-2793
Notice of Entry of Order Granting in Part Motion for Sanctions and/or to Compel Actual Responses to Plaintiff’s First Sets of Interrogatories to Defendants (06/22/2020)	XVIII	4328-4333
Notice of Entry of Order Granting Las Vegas Development Fund, LLC’s Motion to Compel Production of Documents or, in the Alternative, Motion for Preliminary Injunction to Address Front Sight’s Continuing Violation of Section 5.10 of the Construction Loan Agreement and Request for Limited Relief From the Protective Order (05/18/2020)	XVII	4062-4067
Notice of Entry of Order Granting Plaintiff’s Motion for Protective Order (11/27/2018)	I	0075-0079
Notice of Entry of Order Granting Temporary Restraining Order and Expunging Notice of Default (11/27/2018)	I	0099-0104
Notice of Entry of Order on Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint (01/17/2019)	II	0333-0337

1	Notice of Entry of Order on Plaintiff's Motion for	II	0323-0327
2	Preliminary Injunction (01/17/2019)		
3	Notice of Entry of Order on Plaintiff's Motion to	II	0338-0343
4	Disqualify C. Keith Greer as Attorney of Record for		
5	Defendants (01/25/2019)		
6	Notice of Entry of Order on Plaintiff's Petition for	I	0069-0074
7	Appointment of Receiver and for an Accounting		
8	(11/27/2018)		
9	Notice of Entry of Order on Plaintiff's Renewed	II	0328-0332
10	Motion for an Accounting Related to Defendants Las		
11	Vegas Development Fund LLC and Robert Dziubla		
12	and for Release of Funds (01/17/2019)		
13	Notice of Entry of Order on Status Check Regarding	XIII	3092-3095
14	Discovery Responses/Plaintiff's Motion to Compel		
15	(01/23/2020)		
16	Notice of Entry of Order Regarding February 5,	XIV	3381-3385
17	2020 Status Check (02/19/2020)		
18	Notice of Entry of Order Shortening Time	III	0629-0658
19	(02/15/2019)		
20	Notice of Entry of Order Shortening Time	XII	2777-2785
21	(11/15/2019)		
22	Notice of Entry of Order Shortening Time	XII	2823-2836
23	(12/11/2019)		
24	Notice of Entry of Order Shortening Time	XIV	3349-3368
25	(02/11/2020)		
26	Notice of Entry of Order Shortening Time	XVIII	4294-4305
27	(06/12/2020)		

1	Notice of Entry of Order Staying All Subpoenas For	VII	1592-1599
2	Documents and Depositions which were Served on		
3	Non-Parties by Plaintiff (09/13/2019)		
4	Notice of Entry of Protective Order (11/27/2018)	I	0080-0098
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6	Notice of Entry of Stipulation and Order	XII	2841-2846
7	(12/18/2019)		
8	Notice of Entry of Stipulation and Order Regarding	VI	1325-1330
9	Defendants' Judicial Foreclosure Cause of Action		
10	(06/25/2019)		
11	Notice of Entry of Stipulation and Order Regarding	XII	2801-2816
12	Exhibit (12/6/2019)		
13	Notice of Entry of Stipulation and Order Resetting	XIV	3386-3391
14	Hearings and Briefing Schedule (02/25/2020)		
15	Notice of Entry of Stipulation and Order to Extend	XVIII	4390-4403
16	Discovery Deadlines (09/02/2020)		
17	Notice of Entry of Stipulation and Order to Extend	XVII	4046-4056
18	Discovery Deadlines and Continue Trial (Second		
19	Request) (05/13/2020)		
20	Notice of Entry of Stipulation and Order to Replace	XV / XVI	3693-3891
21	Exhibit "A" to Defendant's Motion for Leave to		
22	Amend the Countercomplaint <i>[redacted in district</i>		
	<i>court filing]</i> (04/20/2020)		
23	Notice of Intent to Issue Subpoena to Bank of	X	2379-2459
24	America, N.A. (10/22/2019)		
25	Notice of Intent to Issue Subpoena to Lucas Horsfall,	X	2298-2378
26	LLP (10/22/2019)		
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1	Opposition Memorandum of Defendant Las Vegas	III	0659-0669
2	Development Fund, LLC to Plaintiff's Motion to		
3	Seal and/or Redact Pleadings and Exhibits		
4	(02/19/2019)		
5	Opposition to Defendant Las Vegas Development	III	0670-0730
6	Fund LLC's Motion for Appointment of Receiver		
7	(02/22/2019)		
8	Opposition to Defendant Las Vegas Development	XVII	4017-4045
9	Fund LLC's Motion for Clarification on Order		
10	Shortening Time (05/11/2020)		
11	Order Re Rule 16 Conference, Setting Civil Jury	VII	1573-1577
12	Trial, Pre-Trial/Calendar Call and Deadlines for		
13	Motions; Discovery Scheduling Order (08/20/2019)		
14	Order Scheduling Hearing (09/27/2019)	VIII	1931-1932
15	Order Setting Settlement Conference (12/06/2018)	I	0105-0106
16	Order Setting Settlement Conference (06/04/2019)	VI	1314-1315
17	Plaintiff's Motion for Sanctions (09/17/2019)	VII	1600-1643
18	Plaintiff's Motion to Quash Subpoenas (10/29/2019)	X	2460-2478
19	Plaintiff's Second Motion for Temporary Restraining	IV	0770-0836
20	Order and Preliminary Injunction, Motion for Order		
21	Shortening Time, and Order Shortening Time		
22	(03/01/19)		
23	Reply in Support of Defendant and Counterclaimant	XVI / XVII	3897-4006
24	Las Vegas Development Fund, LLC's Motion for		
25	Leave to Amend the Counterclaim <i>[redacted in</i>		
26	<i>district court filing]</i> (04/29/2020)		
27	Reply to Opposition to Motion to Quash Subpoenas	XI / XII	2661-2776
28	(11/15/2019)		

1	Reply to Opposition to Plaintiff’s Motion for	IV / X	2233-2297
2	Sanctions (10/18/2019)		
3	Reporter’s Transcript of Hearing (Preliminary	VII / VIII	1644-1930
4	Injunction Hearing) (09/20/2019)		
5	Reporter’s Transcript of Motion (Preliminary	V / VI	1090-1313
6	Injunction Hearing) (06/03/2019)		
7	Reporter’s Transcript of Motions (Defendants’	IX	2045-2232
8	Motions to Quash Subpoena to Wells Fargo Bank,		
9	Signature Bank, Open Bank and Bank of Hope)		
10	(10/09/2019)		
11	Reporter’s Transcript of Preliminary Injunction	VI / VII	1331-1513
12	Hearing (07/22/2019)		
13	Reporter’s Transcript of Preliminary Injunction	VII	1514-1565
14	(07/23/2019)		
15	Response to Defendant LVDF’s Objections to	XIV	3392-3411
16	Statement of Undisputed Facts and Countermotion to		
17	Strike (02/28/2020)		
18	Second Amended Complaint (01/04/2019)	I / II	0107-0322
19	Statement of Undisputed Facts (01/17/2020)	XII / XIII	2875-3080
20	Supplemental Declaration of Defendant Robert	IV	0861-0875
21	Dziubla in Support of Defendant Las Vegas		
22	Development Fund, LLC’s Opposition to Plaintiff’s		
23	Second Motion for Temporary Restraining Order and		
24	Preliminary Injunction (03/19/2019)		
25	Supplemental Declaration of Robert W. Dziubla in	IV	0756-0761
26	Support of Defendant LVD Fund’s Reply to		
27	Plaintiff’s Opposition to Defendant’s Motion to		
28	Appointment of Receiver (02/26/2019)		

Mr. Ignatius Piazza
Manager
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Las Vegas Development Fund, LLC

Senior Debt by June 30, 2018

Under the Loan Agreement, article 5.23, Borrower was to obtain the Senior Debt by March 31, 2017. Borrower failed to do so and requested Lender to grant an extension until December 31, 2017, with a 60-day extension if Borrower so chose. Lender acceded to this request, and the parties signed the First Amendment. Borrower then obtained a loan commitment from US Capital Partners dated November 3, 2017.

Borrower, however, declined to proceed with the USCP commitment because the terms were onerous and, therefore, asked Lender for another extension to find a more favorable commitment, saying that Borrower could always go back to USCP if nothing better could be found. Lender again agreed with Borrower's request, and the parties executed the Second Amendment extending the date to obtain the Senior Debt until June 30, 2018.

During the term of the Second Extension (March 1, 2018 to June 30, 2018), Borrower represented to Lender that it had two senior lenders who were offering terms substantially more favorable than USCP and was jockeying to obtain the best terms, as Borrower would need the Senior Debt in place in order to begin vertical construction no later than September 2018. Borrower, however, failed to provide to Lender any of the term sheets, emails or other materials related to these two Senior Debt term sheets as was required under the Second Amendment prior to the June 30, 2018, deadline.

In an effort to remedy this failure, Borrower's legal counsel, Scott Preston, sent an email to our legal counsel, Michael Brand, on July 19, 2018, with several attachments purporting to be evidence of two potential lenders sourced during the term of the Second Amendment. That, however, was grossly misleading, as all of the attached lender term sheets were from long ago, and the only documents relevant to the Second Amendment term were (1) the USCP Release Agreement that terminated the USCP term sheet from November 2017, and (2) an engagement letter for Innovation Capital to act as a financial advisor to Borrower, not a term sheet for a \$25 million loan as represented by Borrower and its counsel.

This intentional misrepresentation and failure to provide term sheets or other documentation confirming Borrower's good faith efforts to obtain the Senior Debt constitutes an event of default under the Loan Agreement and Second Extension.

EB-5 Documentation

Article 6 of the First Amendment states in relevant part that "on or before June 30, 2018, Borrower shall provide Lender with copies of major contracts, bank statements, receipts, invoices and cancelled checks or credit card statements or other proof of payment reasonably acceptable to Lender that document that Borrower has invested in the Project at least the amount of money as has been disbursed by Lender to Borrower on or before the First Amendment Effective Date [emphasis added]"

The First Amendment Effective Date was July 1, 2017, and Lender has disbursed \$2,625,000 of EB-5 funds to Borrower by said date.

Mr. Ignatius Piazza
Manager
July 30, 2018
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Las Vegas Development Fund, LLC

Under cover letter dated June 20, 2018 ("Cover Letter"), Borrower delivered to Lender eight binders of documents ("EB-5 Documents") entitled:

1. Account Report (27 pages)
2. Vendor Report (30 pages)
3. Credit Cards (hundreds of pages)
4. Payroll 2015 (77 pages)
5. Payroll 2016 (hundreds of pages)
6. Payroll 2017 (hundreds of pages)
7. Invoices (hundreds of pages)
8. Invoices 2015 - 2018 (hundreds of pages)

Borrower's cover letter stated that its attorneys had reviewed "all the USCIS guidelines for qualified expenses" as well as the underlying documents between Lender and Borrower and, based thereon, compiled guidelines for Borrower's CPAs "as to the expenses that would be allowable for purposes of your compliance with USCIS."

Attached to this Cover Letter was a letter from Borrower's CPAs dated June 20, 2018, stating that "Enclosed please find the following documents which the Management of Front Sight (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 [sic]."

All of that, however, is utterly irrelevant, as Borrower failed to provide proof of payment. Nowhere in the EB-5 Documents could we find major contracts, bank statements, receipts or canceled checks proving that Borrower had invested \$2,625,000 into building the Project.

The Vendor Report, which appears to be a simple summary of Borrower's internal journal entries, indicates that Borrower spent only \$1,551,900.38 on construction payments to such vendors as All American Concrete & Masonry, Civilwise Engineering, Morales Construction and others but several of those payments were outside the period of time in question. Schedule A attached hereto summarizes those payments, including the ones that were outside the time period applicable. The deficit on construction spending, therefore, appears to be well over \$1,000,000.

Borrower appears to believe that its spending on purchases of guns, ammunition, internet hosting services, data centers, FedEx, Google, sanitation and other similar operating expenses qualifies as an EB-5 expenditure under the First Amendment. That belief, however, is completely erroneous as those are mere operating expenses.

Borrower has failed to prove that its expenditures on construction equaled or exceeded \$2,652,000. That is an Event of Default under the Loan Agreement as amended, and Lender hereby issues this Notice of Default requiring Borrower to remedy the same within 30 days as stipulated in article 6.1 of the Loan Agreement.

Mr. Ignatius Piazza
Manager
July 30, 2018
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Notice of Inspections

Pursuant to articles 3.3 and 3.4 of the CLA, we hereby serve you notice that we and our representatives will inspect the Project and your books and records on Monday, August 27 commencing promptly at 9 a.m. We of course know where the project is. Please immediately inform us the location of your corporate books and records.

Notice of Default - Monthly Evidence of Project Costs

Pursuant to section 3.2(2) of the Loan Agreement, you have failed to provide us on a monthly basis with "evidence of the Project costs funded during the preceding month (whether from Loan proceeds or otherwise)." That failure constitutes a default under the Loan Agreement, and we demand that you remedy this default within thirty (30) days for all months since our first disbursement of loan proceeds through July 31, 2018.

Notice of Default - Completing Construction, Section 5.1 of Loan Agreement

Based on Borrower's statements to Lender over the past sixty days, including, as recently, as last week, Tuesday, July 24, when we visited the Project with two potential EB-5 investors, Borrower has failed to meet multiple requirements of article 5.1 of the Loan Agreement. For example, Mr. Michael Meacher stated that completion of the Project is now planned for "three or four years from now." Another example, Borrower has also failed to provide to Lender the quarterly list of all Contractors, any updated Plans, and other required documents. A third example, based on statements by Borrower to Lender, the Project will not be completed by the Completion Date. These multiple failures constitute Events of Default under the Loan Agreement, and we demand that you remedy them within thirty (30) days for all months since our first disbursement of loan proceeds through July 31, 2018.

Notice of Default - Changing Costs, Scope or Timing of Work, Section 5.2 of Loan Agreement

Borrower is in default of multiple provisions of section 5.2. For example, but without limitation:

- a. On July 24 during the aforementioned property tour, Mr. Meacher stated that the Patriot Pavilion will no longer be 85,000 square feet as represented in the USCIS-approved Business Plan but instead will be "25,000 to 30,000 square feet, and because of recent developments we don't have to have a foundation and will install steel structures that we [Borrower] will lease on a lease-to-own basis payable over 10 - 20 years."
- b. Borrower has failed to deliver revised, estimated costs of the Project.
- c. Borrower has failed to deliver the revised construction schedule when the Project has been delayed by more than 20 days.
- d. Borrower has made multiple changes to the Plans without the prior written consent of Lender.

Mr. Ignatius Piazza
Manager
July 30, 2018
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Las Vegas Development Fund, LLC

Notice of Default - Defaults, Section 5.10(d) of Loan Agreement

Borrower is in default of section 5.10(d) because Borrower knew of a Default or Event of Default and failed to notify Lender of same and failed to take the corrective actions required.

Notice of Default - Work on the Project, Section 6.1(f) of Loan Agreement

Given Borrower's delays in constructing the Project, Borrower is in default of section 6.1(f) of the Loan Agreement.

Payment of Legal Fees

Pursuant to article 8.1(a) of the Loan Agreement and article 7 of the First Amendment, all legal fees incurred by Lender in connection with the Events of Default detailed in this letter shall be at Borrower's expense.

The above list of defaults or events of default may not be complete, and Lender may supplement the same after the inspections on August 27 and based on further developments.

You are required to correct the Events of Default noted above no later than 30 days from the date first written above.

We hereby notify you that our preferred physical delivery address is:

Las Vegas Development Fund, LLC
16870 West Bernardo Drive
Suite 400
San Diego, CA 92127-1677

Sincerely,


Robert W. Dzubla
President & CEO

Attachment - Schedule A (Construction vendor summary)

cc: Mr. Michael Meacher, COO, Front Sight
C. Matthew Schulz, Esq.
Michael Madda, Esq.
Michael A. Brand, Esq.
Ms. Linda K. Stanwood, Senior Vice President

Mr. Ignatius Piazza
Manager
July 30, 2018
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Lee, Vargas Development Fund, LLC

Schedule A
Construction Vendor Summary

Front Sight - Vendor Report per submission of June 20

All American Concrete & Masonry

1/10/2017 \$ 145,000.00
3/3/2017 \$ 164,205.00
4/4/2017 \$ 109,470.00
5/22/2017 \$ 93,055.00
6/23/2017 \$ 54,735.00 NB - same exact amount, a week apart?
6/30/2017 \$ 54,735.00
\$ 621,200.00

Civilwise

10/12/2016 \$ 30,000.00
11/17/2016 \$ 3,362.00
12/12/2016 \$ 10,239.75
3/3/2017 \$ 1,058.00
4/20/2017 \$ 31,755.75
8/30/2017 \$ 18,582.50
11/15/2017 \$ 63,012.50
\$ 158,009.50

Lee's Roofing

12/5/2017 \$ 44,600.00 Need detail as don't recognize contractor

Morales Construction Inc. Note - two payments of \$50k each, one in July 2015 and one in July 2016 are NOT included because prior to loan funding

11/1/2016 \$ 119,719.00
1/27/2017 \$ 2,000.00
3/22/2017 \$ 6,121.29
4/20/2017 \$ 121,721.00
5/19/2017 \$ 2,500.00
8/24/2017 \$ 225,000.00
11/15/2017 \$ 30,300.00
\$ 507,361.29

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Mr. Ignatius Piazza
Manager
July 30, 2018
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Lux Vegas Development Fund, LLC

Nye County Planning Note - need detail
10/27/2016 \$ 350.00
10/27/2016 \$ 1,920.00
\$ 2,270.00

Top Rank Builders
1/10/2017 \$ 78,226.00
2/7/2017 \$ 6,121.29
3/10/2017 \$ 57,624.00
11/15/2017 \$ 76,488.30
\$ 218,459.59

GRAND TOTAL = \$ 1,551,000.38 *PII*

EXHIBIT 9

EXHIBIT 9



August 20, 2018

Via FedEx and Email: (rdziubla@eh5impactcapital.com)

Mr. Robert W. Dziubla
President & CEO
Las Vegas Development Fund, LLC
916 Southwood Boulevard, Suite 1G
P. O. Box 3003
Incline Village, Nevada 89450

With a copy to:

EBS Impact Capital Regional Center LLC
916 Southwood Blvd., Suite 1G
Incline Village, Nevada 89450

Michael A. Brand, Esq.
2924 Selwyn Circle
Santa Barbara, California 93105

C. Matthew Schulz, Esq.
Deptons US LLP
1530 Page Mill Road, Suite 200
Palo Alto, California 94304-1125

Re: Response to Notice of Default dated July 30, 2018

Dear Mr. Dziubla:

We acknowledge receipt of the document entitled "Notice of Multiple Defaults / Notice of Inspection / Monthly Proof of Project Costs" (the "Notice") delivered on July 30, 2018 by Las Vegas Development Fund, LLC, as lender ("Lender"), to Front Sight Management LLC, as borrower ("Borrower" or "Front Sight").

Said notice alleges breach by Borrower of that certain Construction Loan Agreement dated October 6, 2016 (the "Original Loan Agreement"), that certain First Amendment to Loan Agreement dated July 1, 2017 (the "First Amendment"), and that certain Second Amendment to Loan Agreement dated February 28, 2018 (the "Second Amendment"; collectively, the Original Loan Agreement, the First Amendment and the Second Amendment may be referred to as the "Construction Loan Agreement").

There have been no payment defaults on the part of Borrower under the Construction Loan Agreement. We categorically disagree that any breach has occurred as stated in the aforementioned Notice; therefore, we do not agree with any remedial action identified in the Notice. Before setting forth the full response to said

1 Front Sight Road, Pahrump, NV 89064

300.567.7719

0508

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Notice, the matters in dispute should be placed in the context of the background and history that has led us to where we find ourselves today.

Background and History

Inducement of Front Sight to Fund Your EB-5 Raise for the Development and Construction of the Front Sight Resort Project in Dependence on a Raise of \$75 Million

As reflected in email correspondence between you and Front Sight officers, as early as October of 2012, representations were made to us that you and your associates had the ability, experience and networking breadth with Chinese investors to enable you "to put together a financing package for some, or perhaps all, of the \$150 million you [Front Sight] were seeking to raise." (Email correspondence from Robert Dziubla to Mike Meacher dated August 27, 2012.)

In a proposal letter dated September 13, 2012, you, as President and CEO of Kenworth Capital, represented to us that, provided Front Sight agreed to pay "upfront fees" of \$300,000 to cover your "direct out-of-pocket cost to do an EB-5 raise," you "will be able to structure the \$65 million of EB-5 financing as non-recourse debt secured only by a mortgage on the property. Thus, no personal guarantees or other collateral will be required from Dr. Piazza or Front Sight. This non-recourse element of the EB-5 financing is truly extraordinary." The structure chart attached to that proposal letter contemplated "130 foreign investors," "\$500,000 from each investor," and a "\$65 million loan" for the development and construction of the Front Sight Resort Project. In said letter, you represented that your "partners, Emprycan West (Dave Keller and Jay Carter), are the owners and managers of a USCIS-approved regional center, Liberty West Regional Center, through which we will invest the \$65 million of EB-5 funding." In that same proposal letter, you further represented to us:

"I personally have been conversant with and involved in EB-5 financing since the program was first established in 1990, as one of my oldest friends and a fellow partner of mine at Baker & McKenzie, the world's largest law firm, ran the firm's global immigration practice out of the Hong Kong office. During my career, I have spent much of my life living and working in China / Asia and have worked with many Chinese clients and institutions investing abroad. This experience has provided me with an expansive network of relationships throughout China for sourcing EB-5 investors, and this personal network is coupled with our collective relationships with the leading visa advisory firms operating in China.

"In addition to the Chinese EB-5 funding, Emprycan West has been authorized by the Vietnamese government to act as the exclusive EB-5 firm in Vietnam and has been exempted from the \$5,000 limit on international money transfers.

"On a separate note, we also think the Front Sight project will be especially attractive to Chinese / Asian investors because it has "sizzle" since firearms are forbidden to our Chinese investors. Thus any who do invest will be able to tell all of their friends and family that they have invested into Front Sight and been granted a preferred membership that gives them the right to receive Front Sight training in handguns, shotguns, rifles, and machine guns anytime they want."

In that same letter, you also represented to us that "EB-5 funding initiatives typically take 5 - 8 months before first funds are placed into escrow with the balance of the funds being deposited during the next 6 - 8 months. This sort of extended timing seems to be compatible with Front Sight's development timeline given our discussions." (Email correspondence from Robert Dziubla to Mike Meacher dated September 13, 2012, and attached letter of proposal of even date.)

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After multiple exchanges of email correspondence and several meetings, you represented to Front Sight that you and your partners were working on a proposal for "the creation of a new regional center for the Front Sight project and the raise of up to \$75m (interest reserve included) of EB-5 immigrant investor financing." (Email correspondence from Robert Dziubla to Mike Meacher dated December 27, 2012.)

On February 8, 2013, as President & CEO of EB5 Impact Advisors LLC ("EB5IA"), you submitted a revised proposal (the "Engagement Letter") to Front Sight for the engagement of EB5IA to perform services in connection with the raising of \$75 million of debt financing for Front Sight to expand its operations through the EB-5 immigrant investor program supervised by the USCIS, said services to include, amongst other, engaging the services of other professionals to achieve the establishment of the EB5 Impact Capital Regional Center covering Nye County, Nevada, and with approved job codes encompassing the Front Sight Resort Project; to prepare the business plan and economic impact analysis for both the Regional Center and the Front Sight Resort Project as the exemplar transaction for the Regional Center; preparing the offering documentation and making presentations to prospective investors to obtain commitments for the contemplated financing. (Email correspondence from Robert Dziubla to Mike Meacher dated February 8, 2013 and attached letter of engagement. Emphasis ours.) After negotiating a few changes, Front Sight placed its trust in you and your team and executed the Engagement Letter in February of 2013.

EB5 Impact Capital Failure to Deliver on \$75 Million Raise and Promised Timeline

After many months of intense work, with all costs and expenses covered by Front Sight, the application for approval of the Regional Center was filed on April 15, 2014.

During the extended period of waiting for the approval of the Regional Center and the Exemplar Project, more promises and representations were made with respect to the rapidity of the EB-5 raise, including the below:

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

(Email correspondence from Robert Dziubla to Mike Meacher dated June 29, 2014; emphasis ours.)

After many more months of intense follow-up by all concerned parties, including Front Sight, the Regional Center and Exemplar Project were approved by the USCIS on July 27, 2015. Shortly thereafter, marketing efforts began by you, and others engaged by you, with Front Sight continuing to pay for all related costs and expenses. As we are all poignantly aware, the results of those efforts have fallen dramatically short, both of the \$75 million raise that Front Sight had been initially induced to expect, and of the reduced maximum \$50 million raise that subsequently you asked Front Sight to accept, long after Front Sight had been induced into incurring, and had in fact incurred, substantial costs and expenses in connection with such raise. (Email correspondence from Robert Dziubla to Mike Meacher dated July 22, 2017.)

A pattern was established of asking Front Sight to advance funds for travel and marketing expenses by you and other members of your team, including Jon Fleming, and then not delivering even a modest amount of EB-5 investor funds as promised. ("We look forward to having the \$53.5k deposited into our Wells Fargo account tomorrow. Front Sight is the ONLY EB5 project we are handling and of course receives our full and diligent attention. Our goal is most assuredly to have the minimum raise of \$25m (50 investors)

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subscribed by Thanksgiving." Email correspondence from Robert Dziubla to Mike Meacher dated August 11, 2015.)

In October of 2015, you alluded to a "minimum raise of \$25 million" in multiple email correspondence concerning our upcoming negotiation of a construction loan agreement. In response to our repeated expressions of concern with the slow pace of securing investors for our EB-5 program, on December 16, 2015 you wrote: "With regard to the timeline, we may still be able to achieve the minimum raise of \$25m by January 31 and thereafter begin disbursing the construction loan proceeds to you, but a more realistic date might be February 8. Why that date you ask? Because the Christmas holidays and January 1st new year holiday are rather insignificant in China and, importantly, February 8 is the start of the Chinese New Year. Chinese people like to conclude their major business decisions before the start of that 2 - 3 week holiday period, so we expect to see interest in the FS project growing rapidly over the next couple of weeks with interested investors getting their source and path of funds verification completed in January so that they can make the investment by February 8." (Email correspondence from Robert Dziubla to Mike Meacher dated December 16, 2015; emphasis ours.)

On January 4, 2016, in reply to our query as to whether the "minimum raise of \$25 million" would be achieved by February 8, as you had indicated above, you wrote:

"The minimum raise for the Front Sight project is \$25m. At \$500k per investor, that requires 50 investors only. Once we have the \$25m in escrow and the loan documents have been signed (presumably within the next few days), then we will disburse 75% of that to you, i.e. \$18.75m and retain the other 25% in escrow to cover any I-526 applications that are rejected by USCIS, which is quite unlikely given that we already have USCIS exemplar approval for the project. Hence, we will not need to have 63 investors in escrow, just 50. Please refer to my email of October 20 to you detailing the funds disbursement process.

"With regard to timing, based on discussions with our agents over the past few days, including today, it looks like we may have 5 - 10 investors into escrow by February 8, with an additional 20 - 30 in the pipeline. The Chinese New year commences on February 8, so the market will essentially shut down for about two weeks, and then the investors will gradually return to work. The agents are saying that investors who have not already decided on the project by February 8 will contemplate it over the Chinese New Year and discuss it with their family, as it entails the fundamental life change of leaving their homeland and moving to the USA. We are pushing our agents hard to have 50 investors into escrow by February 29. Once we have the 30 investors into escrow with the Minimum Raise achieved, we will disburse the initial \$18.75m to you and then continue with the fundraising, which is likely to accelerate since it has a snowball type of effect. As the funds continue to come into escrow, we will continually disburse them to you. (See the Oct 20 email.) Given that the current EB-5 legislation expires on September 30, 2016, at which time the minimum investment amount will most likely increase to \$800k, we highly anticipate that we will have raised the full \$75m by then."

(Email correspondence from Robert Dziubla to Mike Meacher dated January 4, 2016; emphasis ours.)

On January 31, 2016, in response to our question as to how many "actual investors" with \$500,000 in investment funds into escrow we had to date, you responded: "Two" (Email correspondence from Robert Dziubla to Mike Meacher dated January 31, 2016; emphasis ours.)

From the inception of your marketing efforts, you consistently refused Front Sight's requests to have direct contact with parties reportedly performing services to find EB-5 investors, including King Liu and Jay Li,

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principals of the Sinowel firm. (Email correspondence from Robert Dziubla to Mike Meacher dated August 6, 2015.) From time to time you announced various alliances and associations with brokers and sales representatives in various regions with reported growing "pipelines," but in the end, more than three years after the USCIS approval, after having paid at least \$512,500 in fees and expenses to date, Front Sight has only received \$6,375,000 in Construction Loan disbursements.

Notwithstanding the aforesaid lack of transparency on the part of EB5 Impact Capital, and in a good-faith effort to promote the ongoing marketing of our EB-5 program, as of November 15, 2016, Front Sight agreed to a modified version of your request of advancing you \$8,000 per month for marketing expenses, in detrimental reliance on your representation that the local/regional agents for the investors "were taking it all." (Email correspondence from Dr. Ignathis Piazza to Robert Dziubla dated November 15, 2016.)

Furthermore, when you were soliciting us to pay for the Regional Center, Front Sight requested to be an owner of it since we were paying for it, but you responded that USCIS would not allow it and would look unfavorably on a developer owning a regional center. When we asked for full disclosure on the financial arrangements with the various agents and brokers you claimed to have in place, you told us that said agents require strict confidentiality on all financial arrangements with the regional center and thus you could not disclose to us the financial splits. Front Sight has recently learned from an experienced and reputable industry consultant that these representations are not true. In fact, Developers often own the regional centers handling their projects, and financial arrangements with the brokers and agents are normally transparent and regularly disclosed to the developers. You either knew or should have known that we, as developers, could have owned the Regional Center that we paid for, but for your misrepresentation that this would not be acceptable to the USCIS. You also either knew or should have known that we, as developers, were and are entitled to full disclosures of the financial arrangements that you have made or are making with agents and brokers who produce investors for the EB-5 investor program for our Project. We expressly reserve any claims that we may have against you with respect to the above misrepresentations and their consequences.

Response to Notice

The full response to the Notice is set forth below.

i. Alleged Breach: Failure to Obtain Senior Debt by June 30, 2018

Borrower is not in breach. Pursuant to the definitions set forth in the Original Loan Agreement, "**Senior Debt**" means the additional loan that will be sought by Borrower, and which Borrower will use its best efforts to obtain from a traditional financial institution specializing in financing projects such as the Project" (Emphasis ours). Further, Section 5.27 of the Original Loan Agreement states that "Borrower will use its best efforts to obtain Senior Debt as defined herein." (Emphasis ours). The "best efforts" language included in the Original Loan Agreement corresponds with the representations made by Lender to prospective EB-5 investors in accordance with the updated Confidential Private Placement Memorandum (the "Updated PPM") that was finalized in late June of 2016 and forwarded by you to our outside counsel via email on June 30, 2016. In the section of the Updated PPM entitled "Summary of the Loan," under the heading "The Loan," it states in pertinent part as follows:

"Borrower will seek bridge financing of a senior commercial loan in the amount sufficient to build the Project in accordance with the Business Plan (the "Senior Loan"). If this occurs, it is likely that the commercial lender will procure the first mortgage/deed of trust and a first priority pledge and security interest in the Borrower and that the Fund will take

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a second priority position until such time as the Senior Loan is paid off with the proceeds of this Offering or from other sources." (Emphasis ours.)

Further, in the section of the Updated PPM entitled "Risk Factors," under the heading "Senior Loan and Second Mortgage Interest," it states in pertinent part as follows:

"Borrower will seek bridge financing of a senior commercial loan in an amount sufficient to build out the Project ("Senior Loan"). If this occurs, it is likely that the commercial lender will procure the first mortgage/deed of trust and a first priority pledge and security interest in the Borrower and that the Fund will take a second priority position. There can be no assurances given that the Senior Loan will be available or, if available, on terms favorable to the Fund. If the Senior Loan is not procured, there is a risk that the Project may not be built, that the requisite jobs will not be created, and that the Investors' applications for an EBS visa will be denied." (Emphasis ours.)

Based both on the language included in the Original Loan Agreement as well as the representations to the prospective EB-5 investors made by Lender in the Updated PPM, Borrower is NOT required to obtain Senior Debt.

Notwithstanding the foregoing, on or about October 31, 2017, Borrower obtained Senior Debt by securing a revolving line of credit in the maximum principal amount of Thirty-Six Million Dollars (US\$36,000,000.00) from Top Rank Builders, Inc., Morales Construction, Inc., and All American Concrete and Masonry, Inc. (collectively, "TRB"), which Borrower is using to build the Project facilities. Electronic copies of the fully-executed documents evidencing the revolving line of credit with TRB were delivered to Jon Fleming on October 31, 2017 (see copy of said email, together with its attachments, included as Exhibit "A" hereto). We further refer you to that certain Project Update - Q3 2017, prepared by EBS Impact Capital Regional Center, LLC, the Class A Member and Manager of Lender, addressed to "Our valued EB-5 investors in the Front Sight Resort & Vacation Club," a copy of which you forwarded to Mike Meacher via email on January 17, 2018, the second paragraph of which reads as follows:

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

While the Class A Member and Manager of Lender proceeded to discuss as well the possible financing with US Capital Partners which was being negotiated at that time, acknowledging that "there is no immediate need for this capital," the Class A Member and Manager of Lender unequivocally represented to the EB-5 investors that the line of credit with TRB satisfied the supposed requirement that Borrower obtain a "senior lending facility."

2. Alleged Breach: Failure to provide to Lender copies of term sheets, emails, other materials related to Senior Debt Term Sheets with periodic updates.

Borrower is not in breach. Section 1 of the Second Amendment states in pertinent part: "Concurrently with the execution of this Second Extension, Borrower shall provide to Lender copies of term sheets, emails and other materials related to the Senior Debt Term Sheets and shall periodically, but no less than monthly,

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update the same." As a reminder, starting with our initial meeting with Hank Cairo on June 4, 2016, we updated you frequently with respect to his efforts at identifying "a traditional financial institution specializing in financing projects such as the Project." When it became clear that a "traditional financial institution" would not be an immediate option, we expanded our search for additional financing and again updated you frequently with respect to these efforts. Attached as Exhibit "B" are copies of the following:

- a. Letter of Intent from Summit Financial and Investment Group, LLC, dated as of August 26, 2016, and transmitted to you via email on September 6, 2016;
- b. Term Sheet for Proposed Credit Facility from US Capital Partners Inc., dated as of September 30, 2016, and transmitted to you via email on said date;
- c. Commitment Letter for Proposed Credit Facility from US Capital Partners Inc., dated as of November 3, 2017, and transmitted to you via email on November 5, 2017;
- d. Financial Advisory Engagement with Innovation Capital LLC (the "IC Engagement Letter"), dated as of April 2, 2018, and transmitted to your outside counsel, Mike Brand, via email on July 19, 2018.

In the Notice, you refer to an email from our outside counsel, Scott Preston, to your outside counsel, Mike Brand, on July 19, 2018, "with several attachments purporting to be evidence of two potential lenders solicited during the term of the Second Amendment" and further reference the IC Engagement Letter as follows: "an engagement letter for Innovation Capital to act as a financial advisor to Borrower, not a term sheet for a \$25 million loan as represented by Borrower and its counsel." In the opening to the aforementioned email, Mr. Preston states that "we are forwarding to you various documentation evidencing the good-faith negotiations undertaken by our client to obtain senior financing for the development of the Front Sight Resort," making no reference whatsoever to the time frame during which the documents were received. Further, in referencing the IC Engagement Letter as one of the attachments to the aforementioned email, the accompanying verbiage is as follows: "Innovation Capital in El Segundo, CA. Our client believes this lender, with whom discussions are ongoing, will be able to deliver the US\$25MM in financing necessary to supply the infrastructure cost to the entire project on terms that our client will find acceptable but, as of yet, no final deal has been agreed." Nowhere was the IC Engagement Letter referred to as a "term sheet" as you assert.

3. Alleged Breach: Failure to submit EB-5 documentation proving that Borrower had invested into construction of the Project at least \$2,625,000 (Construction Loan Proceeds to date) by July 1, 2017

Borrower is not in breach. In the Notice, in the first paragraph under the heading "EB-5 Documentation," you recite a portion of the third sentence of Section 6 of the First Amendment, as follows: "on or before June 30, 2018, Borrower shall provide Lender with copies of major contracts, bank statements, receipts, invoices and cancelled checks or credit card statements or other proof of payment reasonably acceptable to Lender that document that Borrower has invested in the Project at least the amount of money as has been disbursed by Lender to Borrower on or before the First Amendment Effective Date." [Emphasis added.] In the second paragraph under the same heading, you state that "[T]he First Amendment Effective Date was July 1, 2017, and Lender had disbursed \$2,625,000 of EB-5 funds to Borrower by said date." In the first sentence of the final paragraph of this section of the Notice, you state that "Borrower has failed to prove that its expenditures on construction equaled or exceeded \$2,625,000 (sic)" and thereafter claim that this constitutes an Event of Default under the Loan Agreement.

Section 3.7 of the Original Loan Agreement states as follows: "Use of Loan Proceeds. Borrower shall use and apply the Loan proceeds solely to all or any number of the individual Project components in

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accordance with the Budget and also to pay some or all of any or all existing indebtedness encumbering the Project pursuant to a Permitted Encumbrance. Borrower shall use its best business judgment based upon then-current real estate market and availability of other financing resources to allocate the proceeds of the Loan in such a manner as to assure the full expenditure of the Loan proceeds advanced to Borrower. Borrower will comply with the requirements of the EB-5 Program and the other EB-5 Program covenants and requirements contained in this Agreement."

Further, Section 4.29 of the Original Loan Agreement states as follows: "Use of Loan Proceeds. The proceeds of the Loan shall be used to pay and obtain release of the existing liens on the Land, to pay for or reimburse Borrower for soft and hard costs related to the pre-construction, development, promotion, construction, development and operation of the Project in connection with the FSFTI Facility and the construction, development, operation, leasing and sale of the timeshare portion of the Project, all as more particularly described on Exhibit F, attached hereto. The Loan is made exclusively for business purposes in connection with holding, developing and financially managing real estate for profit, and none of the proceeds of the Loan will be used for the personal, family or agricultural purposes of the Borrower."

Each of the aforementioned Sections 3.7 and 4.29 of the Original Loan Agreement makes specific reference to the payoff of existing liens that encumbered the Land as of the date of signature of the Original Loan Agreement as a permitted use of the Loan Proceeds. This concept was not included in your original draft of the Original Loan Agreement from October 9, 2015, but rather was added into these provisions at our request and insistence starting with our first round of comments, as transmitted by our outside counsel to your outside counsel on June 12, 2016. You accepted this concept as evidenced by the inclusion of our requested language, with only minor changes, in the second draft of the Original Loan Agreement transmitted by your counsel to our counsel on July 3, 2016.

Your acceptance of the use of a portion of the proceeds of the Loan for the payoff and release of existing liens was not a spur-of-the-moment decision made by you during our negotiations of the terms and conditions that ultimately would appear in the final version of the Original Loan Agreement. Rather, your acceptance of this concept was based on your own representations and understanding of how the proceeds of the Loan would be used dating back to the time of your application to USCIS for approval as a Regional Center, as evidenced, *inter alia*, by the following:

- On or about May 1, 2014, you forwarded to Mike Meacher via email a copy of the original USCIS Form I-924, as submitted by your outside counsel to USCIS on or about April 14, 2014, which included as an exhibit thereto that certain Business Plan dated as of March, 2014 (the "Original Business Plan"). In Section 8 of said Original Business Plan, entitled "Project Financing & Capitalization," under the sub-heading "Project Uses of Capital," there appears a table setting forth proposed uses of the EB-5 investor funds to be advanced to Borrower by Lender, which includes a line item for "Paying off Existing Mortgages," with a proposed amount of US\$9,037,000. Toward the end of said Section 8 of the Original Business Plan, there appears the following additional language:

"The (Borrower) will pay off the following two mortgages using the funds raised via the EB-5 offering:

1. Mortgage 1: The current outstanding balance on this mortgage, as of December 31, 2013, is \$7,779,000. The applicable interest rate is 12% per annum and the monthly payments amount to \$158,000. Please note that the term of the mortgage is 87 months, with the final payment due on July 10, 2019.

"2. Mortgage 2: The Front Sight real estate is encumbered by a second mortgage that was established in 2007 to secure an original indebtedness of \$3,164,410. As of December 31, 2013, that amount had been reduced to \$1,258,000, and Front Sight continues to pay the monthly mortgage amount."

- On January 23, 2015, you copied Mike Meacher on an email which you sent to USCIS, to which you attached a copy of a letter dated on even date therewith, sent by you, in your capacity as President and CEO of EB5 Impact Capital Regional Center, LLC, to USCIS, requesting an update and expedite of the USCIS Form I-924 that was received by USCIS on April 15, 2014. On page 2 of the aforementioned letter, in the first paragraph of Section (a), it states that "The first \$10 million of the new loan from the Fund will be used to pay off the existing debt, including transactional costs and fees, thus cutting the current annual interest rate of 12% in half." (Emphasis ours.)
- On March 16, 2015, you forwarded to Mike Meacher via email a copy of the correspondence from your outside counsel, dated as of March 12, 2015, responding to the first Form I-797 Notice of Action – Request for Evidence (the "First RFE") issued by USCIS in response to your Form I-924 Application for Regional Center. In the response to the First RFE, your counsel included as an exhibit thereto a copy of that certain Business Plan dated as of March, 2015 (the "Revised Business Plan"; collectively, the Original Business Plan and the Revised Business Plan may be referred to as the "Business Plan"). Although several of the exhibits to the Revised Business Plan were missing from the response to the First RFE, the body of the document was complete. In Section 8 of said Revised Business Plan, entitled "Project Financing & Capitalization," under the sub-heading "Project Uses of Capital," there appears again a table setting forth proposed uses of the EB-5 investor funds to be advanced to Borrower by Lender, which includes a line item for "Paying off Existing Mortgages," with a proposed amount of US\$9,037,000. Toward the end of said Section 8 of the Revised Business Plan, there appears again the following additional language:

"The (Borrower) will pay off the following two mortgages using the funds raised via the EB-5 offering:

"1. Mortgage 1: The current outstanding balance on this mortgage, as of December 31, 2013, is \$7,779,000. The applicable interest rate is 12% per annum and the monthly payments amount to \$158,000. Please note that the term of the mortgage is 87 months, with the final payment due on July 10, 2019.

"2. Mortgage 2: The Front Sight real estate is encumbered by a second mortgage that was established in 2007 to secure an original indebtedness of \$3,164,410. As of December 31, 2013, that amount had been reduced to \$1,258,000, and Front Sight continues to pay the monthly mortgage amount."

- On March 19, 2015, you forwarded to Mike Meacher via email a copy of the correspondence from your outside counsel, dated as of March 18, 2015, supplementing his response to the First RFE, *inter alia*, in order to provide to USCIS a complete copy of the Revised Business Plan. Said complete copy of the Revised Business Plan again included the relevant language from Section 8 set forth in the immediately preceding bullet point.

- On May 19, 2015, you sent an email to Mike Meacher to which was attached a copy of your outside counsel's response to a second Form I-797 Notice of Action - Request for Evidence (the "Second RFE") issued by USCIS in response to your Form I-924 Application for Regional Center. In said Second RFE, USCIS requested more detailed information on the source and use of funds from the proposed US\$75MM raise. In both the table included on page 4 of the Second RFE, as well as the revised table included by your counsel in his letter responding to the Second RFE, there again appears the line item for "Paying Off Existing Mortgages," with the same proposed amount of US\$9,037,000.

In reliance both on the foregoing as well as on the provisions of the Original Loan Agreement as signed, we conclude that you erred in your issuance of the Notice not only by failing to consider the amount deducted from the first advance of the Loan for the payoff and release of the class-action judgment, also known as "Mortgage 2" in the Business Plan, but also by failing to consider the monthly principal and interest payments made by Borrower toward the Holcecek loan, also known as "Mortgage 1" in the Business Plan, since the date of signature of the Original Loan Agreement. With respect to Mortgage 2, the amount deducted from the first advance of the Loan was US\$551,871.50. With respect to Mortgage 1, the sum of principal and interest payments made by Front Sight from and after the date of signature of the Original Loan Agreement currently stands at US\$3,634,000, of which US\$1,422,000 was paid on or before June 30, 2017. Your failure to consider the amounts already paid toward both Mortgage 1 and Mortgage 2, together with any future amounts to be paid toward Mortgage 1 until said obligation is paid in full, would constitute a breach of the Loan Agreement by Lender. We further remind you that your failure to raise sufficient funds in connection with the EB-5 offering resulted in Mortgage 1 not being repaid and released in connection with the initial advance of the proceeds of the Loan and thereby has caused us to incur, and we continue to incur, significant additional and unanticipated interest expense, at a rate of twelve percent (12%) under Mortgage 1 rather than at a rate of six percent (6%) that would have prevailed had sufficient funds under the Loan been disbursed to us at the time of the initial advance. We estimate that, to date, this additional interest expense already has cost Borrower in excess of US\$400,000.

Your failure to consider the amounts already paid toward both Mortgage 1 and Mortgage 2, together with any future amounts to be paid toward Mortgage 1 until said obligation is paid in full, would constitute a violation of your representations made to your EB-5 investors in the Updated PPM wherein you represented that the Loan would be secured by a first- or second-priority deed of trust in favor of Lender. As you are aware, and as was set forth in the Business Plan, the Front Sight property was subject to separate first- and second-priority obligations at the time of the initial advance of the proceeds of the Loan. But for the use of a portion of the proceeds of the initial advance of the Loan to pay off and release Mortgage 2, Lender would have ended up with a third-priority deed of trust.

Your failure to consider the amounts already paid toward both Mortgage 1 and Mortgage 2, together with any future amounts to be paid toward Mortgage 1 until said obligation is paid in full, could constitute a material misrepresentation made by EB-5 Impact Capital Regional Center, LLC (the "Regional Center"), to USCIS. As set forth in both the Original Business Plan and the Updated Business Plan submitted by you to USCIS in connection with your Form I-924, Borrower was to use a portion of the funds raised by the EB-5 offering to pay off in their entirety both Mortgage 1 and Mortgage 2. Your brazen attempt not only to ignore the provisions of the Loan Agreement but also to ignore the representations made by EB-5 Impact Capital Regional Center, LLC to USCIS could constitute a material change to the application for Regional Center designation, thereby necessitating a costly and time-consuming amendment to the same as well as potentially causing delays and/or denials of the EB-5 investors' visa applications.

We further assert that you erred in your issuance of the Notice by failing to consider "transactional costs and fees" paid directly by Borrower, be it (i) the funds advanced by Borrower to Chicago Title in

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October of 2016 for the payment of the initial title insurance premiums as well as the escrow-related fees of Chicago Title (US\$9,217.01), or (ii) the payment of other "transactional costs and fees," including, but not limited to, the payment of your outside counsel's fees in connection with the negotiation of the Original Loan Agreement (US\$18,410.50), the fee for terminating your escrow arrangement with Signature Bank (US\$1,500.00), the fee for establishing your replacement escrow with Time Escrow (US\$3,200.00), or additional fees paid to Chicago Title in connection with subsequent advances of the Loan, be it for premiums for endorsements to the original lender's policy of title insurance or for related escrow fees.

Carrying the concept of "transactional costs and fees" one step further, we insist that we should receive credit for certain additional costs and fees incurred by Borrower, including, but not limited to, the initial funds expended by Borrower in connection with the establishment of the Regional Center and the approval of the Front Sight Project as an "Exemplar Project" (approximately US\$162,500), as well as the additional funds expended by Borrower upon your insistence in connection with the ongoing operations and promotion/marketing of the Regional Center which you are reportedly leading (in excess of US\$350,000).

The aforementioned Section 4.29 of the Original Loan Agreement, as executed, also makes specific reference to "soft and hard costs related to the pre-construction, development, promotion, construction, development and operation of the Project in connection with the FSFTI Facility and the construction, development, operation, leasing and sale of the timeshare portion of the Project" as a permitted use of the Loan Proceeds. Before proceeding with a discussion of the foregoing, it may be useful to review the final version of the language of Section 4.29 marked to reflect changes from the equivalent provision in the initial draft of the Original Loan Agreement as proposed by you on October 9, 2015:

~~"The proceeds of the Loan shall be used only to pay and obtain release of the existing liens on the Land, to pay for or reimburse Borrower for soft and hard costs related to the pre-construction, development, promotion, construction, development and operation of a portion of the Project in connection with the FSFTI Facility and the construction, development, operation, leasing and sale of the timeshare portion of the Project, all as more particularly described on Exhibit —E, attached hereto. The Loan is made exclusively for business purposes in connection with holding, developing and financially managing real estate for profit, and none of the proceeds of the Loan will be used for the personal, family or agricultural purposes of the Borrower."~~

You have persisted in your assertion that the proceeds of the Loan could only be used for construction expenses (see, for example, your email correspondence of October 4, 2015, to Mike Meacher, attaching a spreadsheet with various costs and expenses for which you were demanding direct payment by Borrower of certain of your expenses, including, but not limited to, a promotion/marketing fee of US\$8,000 to support the Regional Center; in which you stated that "the EB5 funds must by law be disbursed to FS and used to build the project, so FS will need to deposit the invoiced amount into escrow in time for closing"). Notwithstanding, in your own initial draft of the Original Loan Agreement, you proposed the use of at least a portion of the proceeds of the Loan for "operating of a portion of the Project in connection with the FSFTI Facility."

Your assertion that, by law, the proceeds of the Loan could only be used for construction expenses was further contradicted by your own marketing campaign to us back in September of 2012. By way of illustration, on September 28, 2012, you sent an email to Mike Meacher to which you attached a copy of a letter (the "Liberty West Letter"), dated March 21, 2011, by USCIS, addressed to David Keller of Empyrean West, LLC, approving the designation of Liberty West Regional Center as a Regional Center within the Immigrant Investor Pilot Program. On the very first page of said Liberty West Letter, under the heading "Focus of Investment Activity," it is stated in pertinent part: "the Regional Center will engage in the

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following economic activities: to provide construction financing and/or working capital for commercial real estate and mixed-use projects in the Regional Center." (Emphasis ours.)

Your assertion that, by law, the proceeds of the Loan could only be used for construction expenses was further contradicted by your own outside counsel, acting on your behalf when submitting to USCIS the Form I-924 Application for Regional Center Designation. In the cover letter dated April 14, 2014, by C. Matthew Schulz of Dentons LLP, addressed to U.S. Citizenship and Immigration Services, California Service Center, Attn: EB-5 Processing Unit, a copy of which you forwarded to Mike Meacher via email on April 16, 2014, in the discussion of the Project in Section D, the proposed use of the investor funds was summarized as follows:

"The (New Commercial Enterprise ("NCE")) will contribute the full amount of the aggregate investment as a loan to Front Sight Management LLC, the job creating enterprise ("JCE"). The EB-5 capital proceeds will be used to own and operate a resort/vacation club and firearms training institute in Nye County, Nevada, a targeted employment area based on the "rural" definition. The JCE will construct and operate a resort/vacation club and expand an existing firearms training institute on 555 acres. The development and operation of the business is expected to be on-going and job creation will occur over 30 months and will generate approximately 1,822.7 jobs." (emphasis ours).

In addition to affirming in your initial draft of the Original Loan Agreement that at least a portion of the proceeds of the Loan could be used for the "operation" of the Project, you further agreed to expand the permitted uses of the proceeds of the Loan to include "pre-construction, development and promotion... of the Project." While the term "promotion" is not further defined in the Loan Agreement, a literal interpretation of the word "promotion" would necessarily include at least a portion of the sales and marketing expenses of Borrower, whether with respect to FSFII or "the timeshare portion of the Project." In addition, "promotion" should include the periodic sales and marketing fees which Borrower has been forced to pay to Lender and/or to the Regional Center in order to cause Lender and/or the Regional Center to continue to perform the responsibility of marketing the investment opportunity promoted by the Regional Center, namely, Front Sight, also known as the "Exemplar Project."

We further assert that you erred in your issuance of the Notice by failing to consider certain construction costs incurred by Borrower prior to the date of the initial advance of the Loan. In the so-called Vendor Report Summary that you prepared and forwarded to Mike Meacher via email on July 16, 2018, and which you subsequently attached to the Notice, you summarized certain of the expenses that you had cherry-picked from the full package of expense items that were delivered to you on June 25, 2018. In your list of payments to Morales Construction Inc., you included the following commentary: "Note - two payments of \$50k each, one in July 2015 and one in July 2016 are NOT included because prior to loan funding." We remind you of the following language included in the Updated PPM, under the subject heading "USE OF PROCEEDS":

"In order to achieve the objectives described herein, we are seeking equity investment under the EB-5 Program to finance the Loan to Borrower to develop the Project. Subject to the Holdback described in "THE OFFERING—Closing Conditions," we will pool the aggregate amount of all of the subscription proceeds to make the Loan to the Borrower, which will be used for the development of the Project and to reimburse Borrower for hard construction costs and related expenses of the Project." (Emphasis ours.)

While the word "reimburse" is not defined in the Updated PPM, it is understood to mean "to pay back" (Merriam-Webster) or "to give back the amount of money that someone has spent" (Cambridge), thereby

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necessarily implying that the person being reimbursed has already expended such amounts from his/her/its own funds. By this definition, you erred in excluding the two (2) payments of US\$50,000 each to Morales Construction Inc.

4. Purported Notice of Inspections

Borrower is not in breach; thus, there will be no inspections. In the Notice, you have included a "Notice of Inspections" which alleges that "[P]ursuant to articles 3.3 and 5.4 of the CLA, we hereby serve you notice that we and our representatives will inspect the Project and your books and records on Monday, August 27." As set forth above and below herein, we contend that Borrower is not in breach or default of any of its obligations under the Loan Agreement; thus, Borrower will not authorize any inspections whatsoever by Lender or its representatives of the Project or its books and records on the proposed date of August 27 [2018], or at any other time.

5. Alleged Breach: Failure to Provide Monthly Evidence of Project Costs

Borrower is not in breach. Contrary to your assertion, Borrower has tendered to you evidence of Project costs by means of spreadsheets and summaries prepared by our accountants on earlier occasions. (See email correspondence from Mike Meacher to Robert Dziubla dated April 2, 2018, with attachments.) You have been repeatedly informed that the supporting documentation (copies of invoices, checks, receipts and so forth) was destroyed in the fire that burned down the structure where those Front Sight records were kept in Santa Rosa, California. In an additional exercise of good faith, attached as Exhibit "C" please find monthly reports of Project costs and expenditures for the pertinent dates.

6. Alleged Breach: Failure to Complete Construction, Section 5.1 of Loan Agreement

Borrower is not in breach. In the Notice, you allege that "[B]ased on Borrower's statements to Lender over the past sixty days, including as recently, as last week Tuesday, July 24... Borrower has failed to meet multiple requirements of article 5.1 of the Loan Agreement. For example, Mr. Michael Meacher stated that "completion of the Project is now planned for three or four years from now." Another example, Borrower has also failed to provide to Lender the quarterly list of all Contractors, any updated Plans, and other required documents. A third example: based on statements by Borrower to Lender, the Project will not be completed by the Completion Date." None of your assertions cited immediately above is accurate or true.

First, our COO, Michael Meacher, at no time, and particularly not on Tuesday, July 24 [2018], has mentioned to you or anyone else that completion of the Project is now planned for "three or four years from now." We categorically deny your allegation that such a statement was made by Mr. Meacher. But even if Mr. Meacher had made such a remark, which he did not, given the pace at which you have underperformed your obligation to raise funds for the construction of the Project, impeding the progress that we had hoped to make in the completion of our infrastructure and the commencement of construction of the Project, it is absurd to allege that making such a statement would give rise to a claim of default of any of Borrower's obligations under the Loan Agreement.

Second, Lender has been kept informed of our Contractors and the status of our efforts to proceed with the infrastructure and other work, notwithstanding your failure to raise and disburse sufficient funds for the completion of the infrastructure and the construction of the Project, as promised. A recent example, amongst many, of Borrower informing Lender as above-mentioned is Mr. Meacher's email to you, including the following report on the progress of grading and other pre-construction activities during the second quarter of 2018, so that you could in turn submit said update to the EB5 investors:

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"Front Sight continues to advance the construction of the Front Sight 550 acre property. Front Sight completed the grading of 240,000 cubic yards for the Patriot Pavilion site. Front Sight also completed the grading for a substantial drainage channel on the East side of the Patriot Pavilion 17 acre site. All engineering for this site is completed and thousands of tons of concrete and rebar will be placed in this drainage channel shortly.

"Front Sight also completed the building of 25 outdoor live fire simulators on the Phase 3 range site so the 1000 students training on these ranges can walk, rather than being driven, to these simulators. All furniture, fixtures, and equipment were installed on these ranges and simulators and they are fully functional for the fall season.

"The Front Sight engineers completed the grading plans for the 114-acre resort building site and they were submitted and approved by Nye County Department of Planning and Public Works. A dust control and grading permit have been issued and the grading contractor has begun this major grading project. Front Sight has projected we will grade about 700,000 cubic yards of earth to make the various building sites for the Vacation Villas, the commercial buildings, the clubhouse, the restaurant and other support buildings. This grading is anticipated to take 4-6 months. A progress video will be provided as this moves along.

"Front Sight also made improvements in the utilities and infrastructure. A 10" water main has been purchased and will be installed in the next quarter to connect the multiple water wells on the property as part of the infrastructure for supplying the entire property. Two additional water well locations were designated by the well contractor and drilling for one or both of these wells later this fall.

"Here is a link to the most updated construction video so you can view this progress as Front Sight begins to grade and develop the resort side of Front Sight.

<https://www.dropbox.com/s/f9ge1sh7zmb5m/C%20Construction%20Time%20Lapse%20A%202018%20E%2018%2018.mp4?dl=0>

(Email correspondence from Mike Meacher to Robert Dziubla dated July 13, 2018.)

An additional example of Borrower keeping Lender informed is the following report on the progress of grading and other pre-construction activities during the first quarter of 2018:

"The grading of the 240,000 cubic yards for the Patriot Pavilion site will be complete in mid-April. This 44-acre site includes a pad for the 2000 person classroom, offices, armory, retail store, and ammunition bunker. Front Sight also completed a new road connecting the main road to the newly completed Phase 3 shooting ranges. All 25 of these new ranges are in full use. Front Sight now has 50 total ranges which have a capacity of up to 2,000 people per day.

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

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

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(Email correspondence from Mike Meacher to Robert Dziubla dated April 5, 2018.)

Third, there has been no Borrower's default in compliance with the Completion Date as defined and provided in the Loan Agreement. We refer you to the definition of "Completion Date" in the Original Loan Agreement, which sets forth, in pertinent part:

"Completion Date" means the date that is no later than thirty-six (36) months from the Commencement Date.

We further refer you to the definition of "Commencement Date" in the Original Loan Agreement, which is as follows:

"Commencement Date" means the date following installation of the required infrastructure on the Land and on which construction of the buildings that will constitute the Front Sight Resort and Vacation Club units commences."

As neither of such "triggering" dates (i.e., the date following installation of the required infrastructure on the Land, or the date on which construction of the buildings that will constitute the Front Sight Resort and Vacation Club units commences) has occurred, largely due to your failure to raise and disburse sufficient funds as promised so as to enable Borrower to move forward with such activities, the Commencement Date has yet to happen. Therefore, without the occurrence of the Commencement Date, the thirty-six-month period for the completion of the Front Sight Resort and Vacation Club has yet to commence to run, and there is no possibility of a violation of the Completion Date at this time.

7. Alleged Breach: Changing Costs, Scope or Timing of Work, Section 5.2 of Loan Agreement

Borrower is not in breach. None of your assertions that Borrower is in default of Section 5.2 of the Loan is accurate or valid. Specifically:

- a. On July 24, 2018, during your recent visit to the Project, Mr. Meacher did not state, as you incorrectly allege in the Notice, that "the Patriot Pavilion will no longer be 85,000 square feet as represented in the USCIS-approved Business Plan but instead will be 25,000 to 30,000 square feet, and because of recent developments we don't have to have a foundation and will install steel structures that we [Borrower] will lease on a lease-to-own basis payable over 10-20 years."

In fact, as we have clarified on earlier occasions, the "Patriot Pavilion" is an area and not a specific building. What Mr. Meacher told you last week was that the classroom would be about 30,000 square feet, that there will also be about 7,500 square feet in administrative buildings, plus another 20,000 square feet in commercial buildings, armory, proshop, bathrooms and covered patio space. This area is collectively referred to as the "Patriot Pavilion."

Mr. Meacher also mentioned that we are contemplating the use of steel framed buildings for all of our above-ground structures which could be financed on 4- to 7-year terms, depending on the building. Mr. Meacher never mentioned financing anything from 10 to 20 years.

- b. Borrower has not "failed to deliver revised, estimated costs of the Project." For purposes of the Project, the "Commencement Date" has yet to occur, as set forth above. When the construction of the buildings that will constitute the Front Sight Resort and Vacation Club units commences, we will deliver a copy of our "revised, estimated costs" to Lender.

- c. Borrower has not "failed to deliver the revised construction schedule when the Project has been delayed by more than 20 days," as the construction of the Project has yet to commence, pursuant to the terms agreed and provided in the Loan Agreement, as set forth above.
- d. Borrower has not "made multiple changes to the Plans without the prior written consent of Lender." None of the Borrower's efforts to make progress with the works at the Project, notwithstanding the paucity of funds caused by your underperformance of the obligation to raise our financing, represents a substantial change to our initial plans.

8. Alleged Breach: Defaults, Section 5.10(d) of the Loan Agreement

Borrower is not in breach. As there has been no "Default" or "Event of Default" to be notified to Lender, there is no possibility of Borrower being in breach under Section 5.10(d) of the Loan Agreement.

9. Alleged Breach: Failure to Work on the Project, Section 6.1(f) of the Loan Agreement

Borrower is not in breach. As there have been no delays in the construction of the Project, notwithstanding EBS Impact Capital's failure to deliver to Borrower the required EB-5 investor funds in a timely manner, there is no possibility of Borrower being in breach under Section 6.1(f) of the Loan Agreement. We further refer you, again, to the definition of "Commencement Date" in the Loan Agreement, as set forth above.

10. Purported Claim for Payment of Legal Fees

As Borrower is not in breach or default of the Agreement, as established in detail in the foregoing sections of this Response, there is no obligation whatsoever of Borrower to pay any legal fees incurred by Lender's frivolous allegations of default of the Loan Agreement in the Notice. Notwithstanding the aforesaid, Borrower expressly reserves its right to demand from Lender all legal fees and expenses incurred by Borrower in connection with this Response to Lender's frivolous Notice.

11. Interest Reserve: Interest Offset

In your correspondence of July 16, 2018, addressed to Mike Meacher, among other items, you stated as follows: "4. Interest Reserve - per article 7 of the Construction Loan Agreement, we will implement an interest reserve." As stated near the beginning of this letter, we remind you again that there have been no payment defaults on the part of Borrower under the Construction Loan Agreement. At the time of the initial advance of the proceeds of the Loan, rather than the US\$25MM or US\$75MM that you had from time to time promised to deliver, you were only able to advance US\$2,250,000.

We further wish to remind you of the following language set forth on page 3 of the Engagement Letter under the heading "Compensation":

"(a) Fee. The Company shall pay EBSIA 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."
[Emphasis ours.]

As you will recall, the initial advance of the proceeds of the Loan, in the amount of US\$2,250,000, was made shortly after we (Lender and Borrower) executed the Original Loan Agreement and related documents. As you will further recall, we made our first (interest-only) payment with respect to the Loan on November 10, 2016, and we have made all additional monthly payments of interest as and when required.

in accordance with the Construction Loan Agreement. Accordingly, it would appear that the fee paid to EBSIA was never "offset against the first interest payments" as promised. We further note that, rather suspiciously, EBSIA appears to have been dissolved by you on August 6, 2018. (See copy of List of Entity Actions published in Nevada's Business Portal, attached as Exhibit "D".)

12. Unilateral Decision to Stop Marketing Efforts and Withhold Investor Funds

In your unilateral decision to stop marketing efforts on behalf of Front Sight, notwithstanding our having continued to pay substantial sums in marketing and promotional expenses and/or commissions on the face of a dramatic underperformance on your part, you have breached your obligations to raise sufficient funds for the continuing development and the construction of our Project. Likewise, your unilateral decision to withhold EB-5 investor funds from Front Sight without any default on our part constitutes conversion of our property due to wrongful appropriation of such funds by you.

13. Wrongful Solicitation of Business from Third Parties

Front Sight has learned that you have been and continue wrongfully to solicit business from third parties and/or other projects for the EB5 Impact Capital Regional Center, LLC, in breach of your agreement that Front Sight be the sole project for which funds would be solicited by the Regional Center. (See copy of a "New Project Inquiry" obtained from the Regional Center webpage, attached as Exhibit "E".) This conduct on your part constitutes an additional cause of action that Front Sight can prosecute against you and your related parties.

14. Wrongful Inclusion of Default Interest Rates and Attempted Collection of Attorney's Fees in Loan Statements and Invoices for July 2018 and August 2018

For all of the reasons set forth in this response, Front Sight categorically rejects Lender's wrongful inclusion of Default Interest Rates in the Loan statements for the months of July and August, as well as the wrongful inclusion of attorney's fees in said statements, presumably on the basis of your frivolous claims of default against Front Sight. We have received said statements from NES Financial, who cite Lender's instructions as the reason for the inclusion of Default Interest Rates and attorneys' fees in said statements. Said Lender's instructions are a default of its obligations under Section 6.1(c) of the Loan Agreement. Thus, not only have you breached the Loan Agreement in wrongfully instructing a third-party servicer (NES Financial) to include Default Interest Rates and attorneys' fees without the right so to do, since Front Sight is not in default of the Loan Agreement, but you have defamed Front Sight to NES Financial by falsely representing that Front Sight is in default and thus responsible for Default Interest Rates and attorneys' fees.

15. Intentional Interference with Contractual Relations of Front Sight

Your wrongful withholding of EB-5 investor funds constitutes an actionable cause of action that Front Sight can litigate against you, as you have knowledge of valid contracts between Front Sight and TRB, and you have committed the intentional act of withholding said funds with the design of disrupting our contractual relationship with TRB and/or causing us to breach our contracts with TRB.

16. Demand for Confirmation of Administrative Status of Regional Center

As noted above, EBSIA appears to have been dissolved by you on August 6, 2018. In the Operating Agreement of the Regional Center, dated as of March 26, 2014, a copy of which was submitted to USCIS in connection with the original Form I-924, EBSIA held eighty percent (80.0%) of the issued and

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outstanding membership interests in the Regional Center. Further, you (Robert W. Dziubla), in your capacity as the "Principal" of the Regional Center, represented to USCIS in Section 1a, Part 3 of the original Form I-924 that EB5IA was an owner of the Regional Center. You further represented to USCIS that EB5IA was the Managing Company/Agency of the Regional Center in Section B, Part 3, in that certain Form I-924A, signed by you on or about November 16, 2015. As clearly set forth on the first page of the Instructions to Form I-924, OMB No. 1615-0061, which expires 12/31/2018, "[y]ou must file an amendment to... (s) seek approval for any changes to the regional center's name, ownership, or organizational structure, or any changes to the regional center's administration that affect its oversight and reporting responsibilities, or to add or remove any of the regional center's principals, immediately following the changed circumstances." Front Sight demands herein that you immediately provide evidence to us that the Regional Center has complied with the foregoing requirement, that USCIS has approved of the changes in ownership/organizational structure of the Regional Center, and that the Regional Center is in good standing with USCIS.

Conclusion


As outlined above, Front Sight is NOT in default. You have five calendar days from the receipt of this response to acknowledge that Front Sight is NOT in default, withdraw your Notice, deliver the \$375,000 in investor funds you are holding, as well as any other investor funds that are now available, as well as the \$36,000 you are obligated to credit back to Front Sight from the initial interest payments but have failed so to credit us, plus pay the legal fees of our counsel for having to respond to your frivolous default accusations.

Failure to do so will result in Front Sight immediately filing a lawsuit against you, Jon Fleming, EB5 Impact Advisors LLC, Las Vegas Development Fund, LLC, EB5 Impact Capital Regional Center LLC (a/k/a EB-5 Impact Capital Regional Center, LLC), and any related parties to recover the millions of dollars in damages we have incurred including, without limitation, the following causes of action: (1) detrimental reliance on your recurring and repeated intentional misrepresentation in your promises to raise and secure sufficient funds from EB-5 investors for our Project; (2) lost profits as a result of our delayed development and construction caused by your failure to perform your obligation to raise and secure sufficient funds from EB-5 investors for our Project as promised; (3) intentional misrepresentation of your alleged extensive reach in the China investment market; (4) fraud in the inducement to expend substantial amounts in marketing and promotional activities allegedly being conducted by you in China and India and other overseas markets; (5) fraud in the inducement to enter into the Construction Loan Agreement through repeated misrepresentations regarding your network of investors and capital-raising experience and ability; (6) conversion of our property in wrongfully withholding EB-5 investor funds from Front Sight; (7) breach of contract in soliciting third parties to obtain EB-5 investor funds through the Regional Center; (8) defamation; (9) business disparagement; (10) intentional interference with the contractual relations of Front Sight; amongst others.

Front Sight is more than willing to prosecute its claims against you aggressively and immediately. However, in one last demonstration of our good faith, and in the best interest of the Project and the investors, we will agree to a conference call with all parties in an attempt to move forward in an amicable manner. All parties will sign confidentiality agreements drafted by Front Sight's counsel prior to the conference call. Said conference call must occur prior to the five-calendar-day deadline to acknowledge Front Sight is not in default and deliver all funds you are wrongfully holding.

We expressly reserve all of our rights and remedies in relation to any breach on the part of Lender and/or its representatives.

Mr. Robert W. Dziubla
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Sincerely,

Dr. Ignacius Piazza
Manager

Attachments -- Exhibits "A" through "E"

cc: Mr. Jon Fleming
Mr. Michael Mescher, COO, Front Sight
C. Mathew Schulz, Esq.
Michael A. Brand, Esq.
Scott A. Preston, Esq.
Letvia M. Arza-Goderich, Esq.

EXHIBIT 10

EXHIBIT 10

SECOND AMENDMENT TO LOAN AGREEMENT

This SECOND AMENDMENT TO LOAN AGREEMENT (this "Second Amendment") is entered into and effective as of February 28, 2018 (the "Second Amendment Effective Date") by and between Las Vegas Development Fund, LLC, a Nevada Limited Liability Company ("Lender") and Front Sight Management, LLC, a Nevada Limited Liability Company ("Borrower"). Lender and Borrower and their respective permitted successors and assigns are sometimes referred to in this Second Amendment individually as a "Party" and collectively as the "Parties".

RECITALS

- A. Lender and Borrower entered into that certain Construction Loan Agreement dated as of October 4, 2016 (the "Original Loan Agreement"). The Original Loan Agreement as amended by this First Amendment is referred to herein as the "Agreement". Pursuant to the Original Loan Agreement, Borrower executed a Promissory Note dated October 6, 2016 (the "Original Note") and a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 (the "Deed of Trust"). Initially capitalized terms not defined herein shall have the respective meanings assigned to such terms in the Original Loan Agreement. The Original Loan Agreement was amended by a First Amendment to Loan Agreement effective as of July 1, 2017 (the "First Amendment") to further extend the date for obtaining the Senior Financing.
- B. Borrower has represented to Lender that further extending the date for obtaining the Senior Debt will benefit the Project by reducing borrowing costs by delaying the Senior Debt until it is strictly necessary to allow construction to proceed at the fastest feasible pace. Borrower has further represented to Lender that construction is currently proceeding at the most expedited pace reasonably possible and that Borrower has received preliminary pricing terms from two lenders for the Senior Debt ("Senior Debt Term Sheets"). The Parties desire to further amend the Original Loan Agreement, as modified by the First Amendment, to modify the rights and obligations of the Parties as further set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into the operative provisions of this First Amendment by this reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties further agree as follows:

1. DATE TO OBTAIN SENIOR DEBT. The date of December 31, 2016, in the last sentence of the definition of Senior Debt in the Original Loan Agreement, which was the outside date for Borrower to obtain such Senior Debt, and which date was extended in the First Amendment, is hereby amended to June 30, 2018. Concurrently with the execution of this Second Extension, Borrower shall provide to Lender copies of term sheets, emails and other materials related to the Senior Debt Term Sheets and shall periodically, but no less than monthly, update the same.
2. AGREEMENT RATIFIED. Except as specifically amended or modified herein, each and every term, covenant, and condition of the Original Loan Agreement, Note and Deed of Trust as amended is hereby ratified and shall remain in full force and effect. Each and every reference to the "Agreement" in

the Original Loan Agreement (including, without limitation, the attachments thereto) shall be deemed to refer to the Original Loan Agreement as amended by the First Amendment and this Second Amendment.

3. GOVERNING LAW. This instrument shall be interpreted and construed in accordance with the substantive laws of the State of Nevada, excluding choice of law principles.

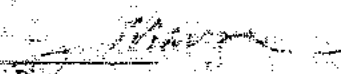
4. BINDING AGREEMENT. This Second Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

5. COUNTERPARTS. This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, Lender and Borrower have signed this Second Amendment as of the Effective Date.

BORROWER:

FRONT SIGHT MANAGEMENT, LLC
A Nevada Limited Liability Company

By: 
Name: Ignatius Piazza
Title: Manager

LENDER:

LAS VEGAS DEVELOPMENT FUND, LLC
A Nevada Limited Liability Company

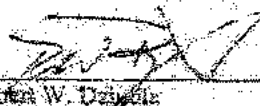
By: 
Name: Robert W. Douglas
Title: President & CEO

EXHIBIT 11

EXHIBIT 11

Las Vegas Development
Front Sight

Las Vegas Development, Inc.
916 SOUTHWOOD BOULEVARD, SUITE 10
P.O. BOX 3003
INCLINE VILLAGE, NEVADA 89450
Telephone: (800) 869-8024
Facsimile: (800) 332-1795

August 24, 2018

Via FedEx and Email

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

With an email copy only to:

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

Re: Notice of Multiple Defaults / Notice of Inspection / Monthly Proof of Project Costs

Dear Mr. Piazza:

We have reviewed your August 20 response ("Response") to our Notice of Default ("NOD") dated July 31.

One thing is very clear: unless we can jointly agree on a realistic path for Front Sight, as Borrower, to cure in an expeditious manner its many defaults, which have now increased because of the Response, we will be forced to record the NOD and proceed to foreclosure and our own completion of the Project. And as so many desperate borrowers do, you will file a lawsuit filled with every claim you can concoct to try to stall the foreclosure. In the end, however, you will lose the property. And you will then be sending off untold lawsuits from the thousands of Front Sight members to whom you have promised -- and pre-sold for varying amounts of money or Front Sight credits -- timeshare units that they will never receive from Front Sight.

Capitalized terms used herein shall have the meaning ascribed to them in the NOD and your Response.

As your very capable legal counsel has no doubt told you, the agreements between us are the "law of the deal." That law is embodied in the following:

1. Engagement Letter dated February 14, 2013, signed by you as the President & Owner of Front Sight Management Inc. ("Engagement Letter"). Your Response fails to indicate

Mr. Ignatius Piazza
Manager
August 24, 2018
Page 3

And (page 4):

"General Matters

(a) This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes and cancels any prior communications, understanding and agreements between the parties. This Agreement cannot be modified or changed, nor can any of its provisions be waived, except in writing signed by both parties."

You also claim that we refused your request to have direct contact with, e.g., King Liu and Jay Li, principals of Sinowet. This too is a lie, as we brought both King and Jay to Front Sight for a visit and meetings with you at the Hilton Airport Hotel in Oakland on Tuesday, October 7, 2014, where you grilled them about their ability to source Chinese investors. I even have a picture of you that day with your arms on their shoulders standing in front of your classic black Cadillac.

Unsurprisingly, you failed to mention one of the most important documents in this entire transaction, the offering Memorandum for the Financing as per the Engagement Letter. That Memorandum, of course, was the "Confidential Private Placement Memorandum" ("PPM #1") that we and our lawyers prepared on your behalf for the Front Sight project, based on information that you provided and that you approved before we submitted it to USCIS as part of the exemplar approval package on April 15, 2014.

As you know, that Memorandum detailed many risk factors, including one that specifically warned:

"EB-5 Market Competition. While we have attempted to distinguish ourselves from other opportunities in the EB-5 market, we will encounter competition from numerous other EB-5 market entities. Certain of our competitors may have greater financial and other resources than we do."

That Memorandum also explains in detail the \$25 million minimum EB5 raise (before escrowed funds could be released) that formed part of the originally contemplated transaction, but which you now attempt to paint as some sort of guarantee or representation by us that we could minimally raise \$25 million, which of course is ridiculous.

You also glaringly failed to discuss our email of May 12, 2016, which followed months of unending complaints from you about the state of the EB5 marketplace and the slow pick-up of investors. In that email we offered you three options:

1. Call it a day, shake hands, and part ways as friends. Naturally, as part of that we first refund the EB5 money that is in escrow to the investors and then close our doors.

2. Restructure the capital stack by (i) eliminating the minimum raise and (ii) bringing in senior debt from a timeshare lender who understands the timeshare business. [Details omitted]

Mt. Ignatius Piazza
Manager
August 24, 2018
Page 5

Use of Proceeds

Use of Proceeds

Subject to the Holdback described in "THE OFFERING—Closing Conditions," we will use all of the subscription proceeds from sales of Interests hereunder, to make the Loan, which amount will be used by the Borrower in accordance with the objectives and strategies described in this Memorandum, namely for the development, construction, and ownership by the Borrower of the Project. See "USE OF PROCEEDS."

The Project

The Project will be the construction of the Front Sight Resort & Vacation Club ("FSRVC") and an expansion of the facilities and infrastructure of the Front Sight Firearms Training Institute ("FSFTI") (the "Facilities") located in a 550 acre site in Pahrump, Nevada. The Facilities will include 102 timeshare residential units, up to 150 luxury timeshare RV pads, an 85,000 square foot restaurant, retail, classroom and offices building (to be known as the Patriot Pavilion) and related infrastructure and amenities, all of which will be located at One Front Sight Road, Pahrump, Nevada 89044 (the "Property").

We assume that your legal counsel has discussed with you the seriousness of making false representations in a securities offering such as this one.

Second, we of course disagree with your interpretation of the Original Loan Agreement because you consistently fail to note that the loan proceeds are to be used for the stated purposes in connection with the Project (as defined). All three of PPM #1, PPM #2 and the Original Loan Agreement are consistent on this point, namely that you as Borrower are to spend the loan proceeds on the Project, and the definition of Project most assuredly does not cover your current business operations.

Default - First Amendment

Third, when Borrower failed to produce by October 31, 2017, the EB5 documentation required under the Original Loan Agreement you represented to us that all your business records had been destroyed when your house burnt down during a wildfire. We then had several discussions about what EB5 documentation you had to deliver to us and by when. You requested that we delay the date until June 30, 2018, because in that intervening period you would assuredly have spent more

Mr. Ignatius Piazza
Manager
August 24, 2018
Page 7

Loan Agreement, p. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

We cannot help but wonder what you are trying to hide by not permitting our inspection.

Draw Request / Conversion

You claim that our withholding \$375,000 of loan funds from you "without any default on our part constitutes conversion of our property due to wrongful appropriation of such funds by you." That truly is the most ridiculous assertion we have ever heard. These funds are not your property, however much you might wish so (this rapacious approach is fundamental to your entire mindset and course of conduct). And as we told Mike Meacher on July 23, if you want loan proceeds, submit a draw request per article 3.2 of the Loan Agreement. Your failure to do so constitutes another default under the Loan Agreement.

We will record our NOD at 9 a.m. on or about September 11, 2018, unless we have a written agreement that details how you will expeditiously cure your many defaults under the Loan Agreement as amended. We recommend that you start curing immediately with the means you have to hand.

We will immediately be implementing article 5.27 of the Loan Agreement because you have failed to obtain the Senior Debt.

We demand that you produce the documents requested above by next Friday, August 31, at or before 5 p.m.

If you wish to discuss this situation, we and our lawyers are willing to meet with you at our offices in San Diego at a mutually agreeable time the week of September 3 on Wednesday or Friday starting at 10 a.m.

Sincerely,


Robert W. Dzambia
President & CEO

cc: Mr. Michael Meacher, COO, Front Sight
Michael A. Brand, Esq.
C. Matthew Schultz, Esq.
Michael J. Madda, Esq.
Ms. Linda K. Starwood, Senior Vice President

EXHIBIT 12

EXHIBIT 12

**Las Vegas Development
Fund LLC**

Las Vegas Development Fund, LLC
916 SOUTHWOOD BOULEVARD, SUITE 10
P.O. BOX 3003
INCLINE VILLAGE, NEVADA 89450
Telephone: (844) 899-8028
Facsimile: (855) 332-0795

August 28, 2018

Via FedEx and Email

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

With an email copy only to:

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

Re: Notice of Multiple Defaults / Notice of Inspection / Monthly Proof of Project Costs

Dear Mr. Piazza:

We have received your August 25 response to our second Notice of Default dated August 24.

We again reiterate our adamant position: you must prove up that you are investing into the Project, as defined, at least as much money as we have lent to you. Without that, our EB5 investors will not get their green cards and their lives will be destroyed. Ponder that. Lives and families will be destroyed. We cannot, and will not, allow that to happen.

Use of Loan Proceeds

Further regarding the ongoing dispute about your use of the loan proceeds and the expenditures that you need to prove up, we also refer you to section 1.7(c) of the Loan Agreement, which states:

"Borrower shall use the proceeds of the Loan solely for the purpose of funding directly, or advancing to Affiliates to pay, the costs of the Project, in accordance with the terms and conditions of this Agreement, as set forth in the Budget and the Project documents submitted to, and approved by, USCIS."

Mr. Ignatius Piazza
Manager
August 28, 2018
Page 2

Las Vegas Development Fund, Ltd.

Proving up Expenditures

We are pleased to see that you finally appear to understand the need to prove up your construction expenditures and look forward to receiving that proof of payment by Thursday, August 30th as promised in your letter of August 25, 2018.

Major Contracts

We reiterate our demand of August 24, 2018, that you send to us copies of all your major contracts as required by the First Amendment and article 5.10(e) of the Loan Agreement.

Updated Plans and Construction Schedule

We demand that you provide us with:

- ✓ the original Plans (Loan Agreement, definitions and article 3.2(b)(i)),
- ✓ the schedule listing all Contractors (Loan Agreement, article 3.2(b)(ii)),
- ✓ the list of all agreements, licenses and permits relating to the construction, development and operation of the Project (Loan Agreement, article 3.2(b)(iii))
- ✓ copies of current policies of insurance for property insurance, liability insurance, and workers compensation insurance (Loan Agreement, article 5.6)

You have down-sized the Patriot Pavilion from 85,000 square feet, as per the USCIS-exemplar approval, to what you now represent in your letter of August 20, 2018, to be 57,000 square feet without our prior written consent. That is a huge change and a breach of article 5.2 of the Loan Agreement.

In your letter of August 24, 2018, you state that the Project is 18 months away from completion. As we previously told you, however, per the Loan Agreement, the Project must be completed by October 4, 2019, i.e. 36 months from the Commencement Date. In light of this pending default and the enormous changes to the scope of the Project, we demand that you provide us with an updated construction schedule and budget.

Draw Request

We again demand that you issue a draw request as per article 3.2 of the Loan Agreement for the \$375,000 we are holding. Your request that we release the remaining funds is ineffective, and your persistent refusal to provide a draw request is a breach of article 3.2.

Senior Debt

The \$36 million construction line of credit dated October 31, 2017 ("LOC"), is not the Senior Debt required under the Loan Agreement. Review the definition of Senior Debt.

Mr. Ignatius Piazza
Manager
August 28, 2018
Page 3

Las Vegas Development Fund, LLC

Moreover, Front Sight itself has acknowledged the same. On July 4, 2018, long after you had signed up the LOC, Mike Meacher sent us the following email:

"Naish Piazza came over for the last couple of days and we have working agreement from a \$1.3 billion dollar manufacturing company to extend Front Sight about \$40 million in construction credit to build all of the buildings on both the firearms training side and the resort side of the facility. This business is owned by one individual. He and Naish worked out the framework for this agreement on Monday and we anticipate having it finalized in the next 60 days. Because of this good news, we have elected not to take the construction loan Naish had been negotiating. This is a better deal for the project. We will now only need a smaller amount for a construction loan to cover the projected infrastructure costs.

Because of this good news, Front Sight will need an additional 90-day extension to provide you with the loan agreement and/or commitment letter we have been discussing. Please get Mike Brand to write up such an extension agreement."

We have given you almost two years of extensions to obtain the Senior Debt, but you continue to stall, prevaricate and obfuscate. We have already refused to grant you any further extensions on obtaining the Senior Debt. Accordingly, we will be implementing article 5.27 of the Loan Agreement.

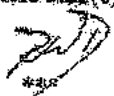
Inspection of Books and Records

We reiterate our demand to inspect your books and records per article 5.4 of the Loan Agreement. Your continuing refusal to allow that inspection is a breach. You emphatically state that you "have absolutely nothing to hide in our books and records." Fine, then we look forward to inspecting them along with our forensic accountants immediately. Where are they located?

Under the LOC, article 4.9.4, you are required to keep them at 1 Front Sight Road, Pahrump, NV. Are they in fact there?

Steel Structures on 4- to 7-year Financing

We wish to point out that your recently revealed plan of using steel framed buildings to be financed on 4- to 7-year terms will be a breach of article 5.21(c) of the Loan Agreement unless you have secured the Senior Debt to finance the same.




Mr. Ignatius Piazza
Manager
August 28, 2018
Page 4

Las Vegas Development Fund, LLC

On Tuesday, September 11, 2018, at 9 a.m. we will record the NOD and proceed to foreclosure unless we have received all the documents required above by COB on Friday, August 31, 2018, and have in place by Friday, September 7, 2018, no later than 5 p.m., a signed workout agreement detailing: (a) how Front Sight will cure its many current defaults and (b) confirmation of the EB5 documentation that Front Sight is required to provide to us by October 31, 2018, for the \$6,375,000 of EB5 funds that we have lent to you.

Sincerely,



Robert W. Dziubla
President & CEO

cc: Mr. Michael Meacher, COO, Front Sight
Michael A. Brand, Esq.
C. Matthew Schulz, Esq.
Michael J. Madda, Esq.
Ms. Linda K. Stanwood, Senior Vice President

EXHIBIT 13

EXHIBIT 13

Las Vegas Development
Fund LLC

Las Vegas Development Fund, LLC
28 SOUTHWOOD BOULEVARD, SUITE G
P.O. BOX 3003
INGENIE VILLAGE, NEVADA 89438
Telephone: (544) 309-6029
Facsimile: (544) 337-5765

October 24, 2018

Via Federal Express and Email

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

With an email copy to:

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

John Aldrich, Esq.
Aldrich Law Firm Ltd.
1501 S Rainbow Blvd, Suite 160
Las Vegas, NV 89146

Re: Demand to Cure Default

Dear Mr. Piazza:

This demand letter states below the conditions for you, as the Borrower under the Construction Loan Agreement, as amended, plus related documents (collectively, "CLA"), to cure your many defaults:

1. In a gesture of good faith, we are offsetting the \$36,000 that you claim EBS Impact Advisors LLC owes to you under the expired engagement letter of February 14, 2013, despite the fact that this company has been dissolved and despite your never having raised this claim until September 14, 2018;
2. Pay the sum of \$135,956.76 which represents the amount of interest, default interest, late charges, title company / trustee costs, and attorneys' fees billed to us through October 24, 2018, less the \$36,000 offset;
3. Confirm you will give me and my experts and consultants unimpeded access to Front Sight's books and records regarding the project and Front Sight's operations beginning on November 8, 2018, at 1 p.m. local time, as required under section 5.4 of the CLA; and

Mr. Ignatius Piazza
Manager, Front Sight
October 24, 2018
Page 2

4. Confirm your commitment to complete construction of the Project, as defined in the CLA, no later than October 4, 2019, which is the contractually required Completion Date, and provide me and my experts and consultants full unimpeded access to Front Sight's books and records regarding the project and Front Sight's operations on 24-hour notice for the duration of the project

Sincerely,



Robert W. Dziubla
President & CEO

Co: Michael Brand, Esq.
Michael Madda, Esq.

EXHIBIT 14

EXHIBIT 14



WORLD'S BEST...
TOGETHER WE...
IN THE MIDDLE

ACQUISITION...
COURSE...
FIREARMS TRAINING...
INSTITUTE

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Front Sight...
2019

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2019

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2019

Extremely Confidential FRONT SIGHT MEMBERS ONLY Emergency Action Alert

Lying, Two-Faced, Gun-Grabbing Hillary Clinton Supporting, Con Man Attempting to STEAL Front Sight from YOU for His Own Greed!

NOW is the Time to Expose Him. NOW is the Time to Defeat Him!

NOW is the Time to Demonstrate the Strength of Front Sight's 200,000 Members by Giving this Traitor What He Truly Deserves While We Join Together to Complete the Resort in RECORD TIME!

Dear Loyal and Supportive Front Sight Member,

You have seen the construction progress videos I have e-mailed to you and you know Front Sight has made steady and consistent progress toward the completion of the resort. You know all 50 ranges are completed and operational and you know we are almost done with all the grading of the entire resort, with infrastructure (water, power, sewer) going in next and then vertical construction to follow.

You also know, as I have written several times in my e-mail correspondence with you, that once the resort is completed, financially self-sufficient, self-sustaining, and running like the well-oiled machine you are accustomed to experiencing whenever you attend a course at Front Sight, I will gently and graciously turn Front Sight Firearms Training Institute over to you, my loyal and supportive members, so you and your families can own and operate Front Sight for generations to come.

Well there is one, lying, two-faced, gun-grabbing Hillary Clinton supporting, con man who evidently has been scheming and plotting for years to STEAL Front Sight away from you for his own calculated, covetous personal greed and I am going to need your help to not only stop him in his tracks, but also give him what he truly deserves for what he has done to us, while we come together as a group, 200,000 strong, to complete the resort in record time!

I am about to share all the sordid details of how Front Sight was conned out of more than \$500,000 over the last several years by a man who initially posed as a legitimate businessman in 2012, with experience in raising construction funds for established and rapidly growing projects in rural areas. He represented he was one of us, a pro-gun patriot who wanted to assist Front Sight in positively changing the image of gun ownership in our lifetimes by helping us complete the resort with low interest money he would source from his vast pool of overseas investors. He promised he would raise all the funds needed to complete the resort and do it quickly if we covered all the administrative costs and some initial marketing costs.

As I divulge the details of his identity, where he lives, what he does, and how he hoodwinked us into falling for his scam, I'm sure you will become as mad and disgusted in reading this, as I am as I write it, because it is not just the \$500,000 that he conned out of us that is his biggest atrocity.

It is not the fraudulent misrepresentation he made regarding his experience and network of investors. It is not his utter failure to deliver on his multiple promises of full funding for our project.

It is not the fact that he did not raise as promised \$150 million, or \$75 million, or \$50 million, or \$25 million or even \$10 million in funds toward the completion of the Front Sight Resort.

No, his biggest transgression against us and really his biggest sin against YOU is the fact that after we provided everything we agreed to provide and kept the resort project moving forward in spite of his

fraudulent misrepresentation and failures, and having never failed to pay any of our financial obligations under his funding agreement; he is now deceitfully attempting to STEAL Front Sight away from YOU by fraudulently and fictitiously claiming WE are in default of some weasel worded and highly questionable language in our agreements with him.

He is claiming he has the right to sell Front Sight's land and water rights, EVEN THOUGH WE HAVE NEVER FAILED TO PAY ANY OF OUR FINANCIAL OBLIGATIONS UNDER HIS FUNDING AGREEMENT and have moved the project toward completion, even though he failed to deliver his promised funding!

He is doing this as a smoke screen to hide behind his utter failure to deliver the full funding for our resort project that he promised multiple times. He is claiming WE are at fault in the lack of completion of the project, when he has provided less than 5% of what he originally promised he could fund, even after we have paid more than \$500,000 for all of the administrative and marketing fees associated with raising the funds he promised. The fact of the matter, as you have witnessed, is Front Sight has continued to build the project toward completion even though he has utterly failed multiple times in providing the promised full-funding for the Front Sight Resort Project.

But what makes me the most angry and what I am sure makes you furious as well is that he would sinisterly plot to steal Front Sight away from you and try to sell the land and water rights for his own personal greed by fraudulently and fictitiously claiming we are in default.

I can assure you, and so can the three separate attorneys I hired to review, prepare and file our lawsuit against this crook, that FRONT SIGHT IS NOT IN DEFAULT. We have NEVER been in default.

Quite the opposite. It is Front Sight who has performed and continuously advanced the project as you have personally witnessed.

On an interesting side note, in anticipation of having to file a lawsuit against this con man, we recently hired a private investigation firm to do a complete investigation of him. I will share the results of the investigation, including surveillance photos, his home address, his fictitious Nevada business addresses and more information later in this letter. Turns out he is not the pro-gun patriot he claimed he was. Surprise, surprise. He is a gun-grabbing Hillary Clinton financial supporter! I'll bet it makes your blood boil as much as mine to think this traitor used the money we paid him that was supposed to support the Front Sight project and instead used it to support the gun-grabbing schemes of Hillary Clinton. This turncoat needs to be punished, to the full extent the law will allow, for what he has done to us and what he has done to you.

So WHY is this imposter claiming we are in default on some weasel-worded, highly questionable interpretation of his funding agreement?

WHY would he attempt to steal Front Sight from you by selling Front Sight's land and water rights?

One word... LEVERAGE.

He is attempting to leverage us with his false claims that we are in default so we will not pursue our LEGITIMATE claims against him, representing tens of millions of dollars in actual damages, for fraudulently conning us out of more than \$500,000 dollars and delaying our project for years with false promises he could raise \$150 million in low interest construction funding for us.

When he couldn't deliver raising \$150 million, he promised \$75 million. Then when he failed to deliver on that promise, he said it would be \$50 million, then \$25 million and so on...

He would deliver an occasional, small amount of funds, with promises he had more "in the pipeline" but the promised "in the pipeline" full-funding never appeared. This is now he kept the long con in place. He kept taking our money, never providing the promised full-funding, all the while sinisterly plotting for the moment he could leverage us to negotiate his free and clear exit, after taking over \$500,000 from us.

He has manufactured a bogus claim that we are in default, made outrageous demands including charging default interest on the minimal funds he had previously delivered and threatened to foreclose on the project, and sell it, if we do not agree to his outrageous demands.

Of course he knows that with a default in place, even a fraudulent claim of default that he could never prove, it would still place a cloud on the project that would cause us to lose money and time in fighting the default, scare off contractors from working on the project, cause concern among potential students and members of Front Sight's viability, and delay the project completion for years.

He is banking on this threat of stealing Front Sight from you as leverage to negotiate a free and clear exit from his fraudulent misrepresentations and the tens of millions of dollars in the financial damages he has caused us with his lies and failure to deliver the full-funding he promised multiple times.

I know you are like me and believe that good, noble people like we are, must stand up against the corrupt and dishonorable of the world. That is why I know you are as afraid as I am and I am sure you agree. We cannot let this lying, gun-grabbing Hillary Clinton supporting, con man get away with his malicious plan.

HOW did this happen? Quite frankly we got suckered by his fraudulent misrepresentations and the occasional funding he did deliver, and for a while, we believed the reasons he stated for the delays.

As we were building the project on our own, we needed less funding each year, so we were willing to give him more time to fulfill his promises of full funding.

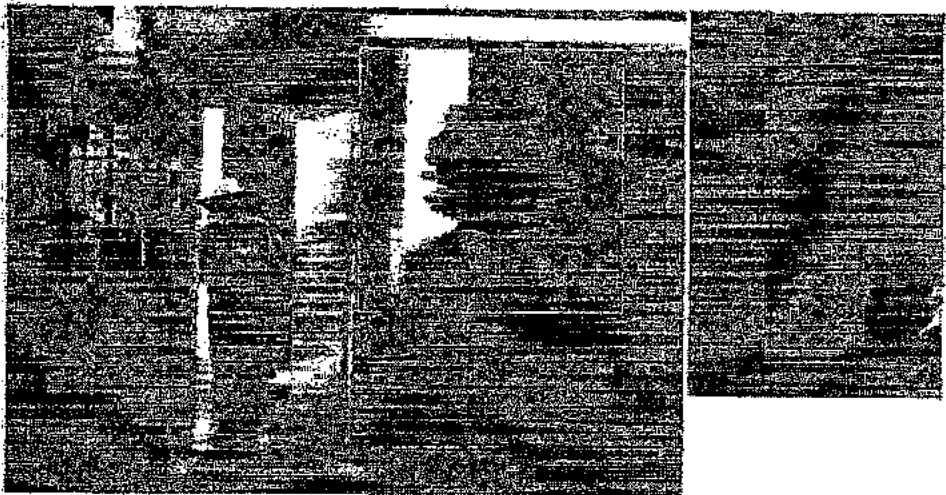
Believe me, once we realized he was nothing but a lying, two-faced, double-dealing con-artist, and made his move to try to steal Front Sight from you, WE HAD NO CHOICE BUT TO IMMEDIATELY AND AGGRESSIVELY FILE A LAWSUIT AGAINST HIM.

As I am sure you agree 100%, we cannot stand by and allow anyone to steal Front Sight from you, under some bogus claim of default in an attempt to secure the right to sell Front Sight. We also cannot allow him to leverage such a frivolous default claim into some kind of settlement that allows him to get away free and clear of any responsibility for his fraudulent misrepresentations, that cost us tens of millions of dollars in delays and damages. WE HAVE NO CHOICE, WE HAVE TO FIGHT. We have all worked too hard and too long to allow such a travesty to occur or let a con man try to harm you and Front Sight in any way.

So who is the man attempting to steal Front Sight from You?

His name is [REDACTED]

Here are a few surveillance photos of him.



He lives at [REDACTED] CA [REDACTED]



He claims a Nevada business address in the high end enclave of Incline Village but it is nothing more than a postal drop and cannot even accept the Fed Ex Notice of our lawsuit. He claims to have a Regional Center in Nevada for raising foreign investment money but it is just on paper.

One of his excuses, after three years of failing to deliver on multiple promises of full funding, was that he had exhausted all of his money in pursuing the funding and was financially broke. With this lie, he conned us into giving him \$8,000 per month that he claimed he would use for marketing of the project to his network of foreign investors to secure the full funding he promised. As you can see from his million dollar home and the Lexus and brand new Mercedes Benz in his garage, he had not exhausted his finances and was not broke. The private investigation firm also discovered he holds significant financial assets. Robert Dziubla is a liar and a con man, who was plotting to STEAL Front Sight from you all along.

We have filed our lawsuit to seek justice against Robert Dziubla's notorious claims of default and attempt to steal Front Sight from you. I have enclosed our Lawsuit and our Motion for Receivership asking the Court to appoint a Receiver to take over Dziubla's business so you can see all our legal claims against him.

**There's no question that we will win our lawsuit against this swindler!
Every attorney we've had review this case agrees we will win.**

However, the problem that we face is not in winning the lawsuit.

The problem is the negative aspects of litigation.

They are:

1. It costs money and time to fight. If we don't act immediately and aggressively, it could take three years or more and cost \$500,000 or more in legal fees to receive justice in this case.
2. If we don't act immediately and aggressively, contractors, even those we have been using and have paid like clockwork, will be reluctant to work on the project because it is clouded in litigation.
3. If we don't act immediately and aggressively, REAL lenders, even those we have established to work with us on the project, will be reluctant to continue because the project is clouded in litigation.
4. If we don't act immediately and aggressively, potential students and potential members, even though we have never canceled a class in our 23 year history, have demonstrated consistent and phenomenal growth, even through obstacles and challenges much greater than this, will have concerns about Front Sight's viability due to the cloud of litigation and may not purchase courses or memberships.
5. If we don't act immediately and aggressively, advertisers, even those we have used in the past with great success and paid without fail will be reluctant to accept our advertising for fear they may not get paid due to the litigation.

Yes, just when we are almost done with all the grading of the entire resort, with infrastructure (water, power, sewer) going in next and then vertical construction to follow, we have the potential of the project being delayed for years... unless we all act together immediately and aggressively to stand up to this lying thief!

So with all the potential negative aspects of litigation, why did we file our lawsuit?

As I said before and as I am sure you agree, WE HAVE NO CHOICE. We cannot stand by and allow a thief to steal Front Sight from YOU under some bogus claim of default in an attempt to secure the right to self Front Sight.

We also cannot allow him to leverage such a frivolous default claim into some kind of settlement that allows him to get away free and clear of any responsibility for his fraudulent misrepresentations of full funding, that cost us tens of millions of dollars in delays and damages.

REMEMBER, this lying, two-faced, gun-grabbing Hillary Clinton supporting, con man, Robert Dziubla, knows we could suffer the adverse effects of litigation and THAT is what he is counting on by attempting to steal Front Sight from you as LEVERAGE to force us into giving him a free and clear exit from all of his transgressions against us. I know you see what he is trying to get away with, and I know you are just like me in your mindset of what is right and wrong and know we must fight.

But don't worry. We can overcome the negative aspects of litigation and get the Front Sight Resort built on schedule or even faster by immediately and aggressively following these Secrets of the Ultra Successful that I have learned and perfected over nearly 40 years of real world experience in business matters like these.

Here's how we turn the tables on Dziubla and shove his dirty deeds against you right down his throat...

1. Now that we filed our lawsuit, we press our prosecution of the litigation like a blitzkrieg and we do not ease our blistering legal attack until we have decisively won, forcing Dziubla into debtor's court to expose his assets for our collection or forcing him into financial ruin in bankruptcy court.
2. Now that we have filed our lawsuit, we increase our marketing dramatically by paying advertisers in advance to fill our courses and attract tens of thousands of more students to experience Front Sight first hand, and like you, want to align with our purpose to positively change the image of gun ownership in our lifetimes by becoming a member and supporting our mission. You may have already noticed endorsed radio ads we have begun running on the Larry Elder Show, the Dennis Prager Show, the LeAnn Tweeden Show, the Ben Shapiro Show, and World Net Daily that are driving hundreds of new students and members to us each day. We will be adding more radio personalities and other media to our marketing each month as we press our litigation.
3. Now that we have filed our lawsuit, we continue construction progress by paying contractors currently working on the project with advance deposits to keep them working on the project with confidence. We will offer contractors we need for infrastructure and vertical construction similar advance deposits and incentives to work on project while we prosecute our litigation.
4. Now that we have filed our lawsuit we need to increase cash reserves and profit so potential lenders that may be needed to complete project see that litigation has not adversely affected Front Sight's ability to profitably operate, grow, and accumulate cash reserves.
5. Now that we have filed our lawsuit we need to REWARD YOU, my loyal and supportive member with a special "Exchange in Abundance" for your good faith in Front Sight's purpose and your immediate financial support in overcoming the obstacles of litigation as we fight against the con man who is trying to steal Front Sight from you.

Yes, this litigation we must fight against an evil man plotting to steal Front Sight from you, means I am going to reward you like never before, for your faith in action by helping good overcome evil and your continued, immediate support of Front Sight's mission.

I have created a geometric, ascending scale of "Exchange in Abundance" so the more you support Front Sight the greater your benefits and they grow geometrically!

As I have written several times in the my e-mail correspondence with you, that once the resort is completed, financially self-sufficient, self-sustaining, and running like the well-oiled machine you are accustomed to experiencing whenever you attend a course at Front Sight, I will gently and generously turn the operation of Front Sight over to you, my loyal and supportive members, so you and your families can own and operate Front Sight for generations to come.

When it is time to turn over Front Sight Firearms Training Institute to you, I will allow you to trade in your surplus credits, memberships, and certificates for your percentage of ownership.

This means that the more credits, memberships and certificates YOU have to trade in, the greater percentage of ownership you will secure relative to the other members.

For this reason, you should build up your account AS MUCH AS YOU CAN. In other words, you cannot have too many credits, memberships and certificates to trade in. Quite the opposite. The more credits, memberships and certificates YOU have, the more percentage of ownership you will be able to secure relative to the other members.

And to REWARD YOU, my loyal and supportive member for your faith in Front Sight and your financial support in overcoming the obstacles of litigation as we fight against the con man who is trying to steal Front Sight from you, I have created the greatest GEOMETRIC "Exchange in Abundance" that rewards you in a geometric fashion for your support. Meaning the more you participate the greater your benefits are accumulated geometrically. Instead of 1:1 benefits, you will get 2:1, 4:1, 8:1, 16:1, 32:1, and so on...

This is the greatest opportunity you will EVER have to GEOMETRICALLY grow the surplus memberships, credits, and certificates you have in your account.

Then, when the resort is completed, financially self-sufficient, self-sustaining, and running like the well-oiled machine you are accustomed to experiencing whenever you attend a course at Front Sight, and I offer to gently and generously turn the operation of Front Sight over to my loyal and supportive members, you will have what you need to trade in to secure as much ownership percentage as possible relative to the other members, so you and your families can own Front Sight for generations to come.

What am I going to do with your participation in this GEOMETRIC Front Sight "Exchange in Abundance" Reward? Exactly what I outlined above...

1. Destroy Dzigbla by rapidly and aggressively prosecuting our lawsuit against him to overwhelming victory!
2. Increase our marketing to spread Front Sight's message to all gun owners and grow Front Sight dramatically!
3. Grow our financial reserves, increase the pace of construction and complete the Front Sight Resort in record time!

Participate to the highest levels you possibly can so we will win our lawsuit quickly, grow Front Sight dramatically, complete the resort in record time, and pay for it in full.

See my greatest GEOMETRIC "Exchange in Abundance" Reward for your loyal support and participate to the highest levels you can today...

Greatest GEOMETRIC Front Sight "Exchange in Abundance" Reward

First, even if you only participate at the \$10 Litigation War Chest Fund level, I am placing \$200 in Front Sight Credits into your account that you can use in our pro shop or for your criminal background checks and I'm giving you 2 Four Day Course Certificates and 2 Patriot Lifetime Memberships that you can sell or transfer to anyone you wish, simply to thank you for being a Front Sight Member because I know you believe in our purpose to positively change the image of gun ownership in our lifetimes and you continue to support our mission.

Yes, it's true. Just check the \$10 Litigation War Chest Fund box and I will place \$200 in Front Sight credits, plus 2 Four Day Course Certificates and 2 Patriot Lifetime Memberships into your account.

PLUS, I will place these assets in your account BEFORE the Doubling, Tripling, Quadrupling, 5X, 7X, 10X, 20X, 50X or 100X occurs in your account assets! So even if you are relatively new to Front Sight and do not have much in the way of account assets, by placing \$200 in credits and 2 Four Day Course Certificates and 2 Patriot Lifetime Memberships into your account BEFORE processing whatever higher levels you participate you select, YOU will have \$200 in Credits and 2 Memberships and 2 Certificates to geometrically grow to the highest levels you want and thus position yourself for even greater future benefits and ownership.

I told you this was my Greatest GEOMETRIC "Exchange in Abundance" Reward I have ever created!

And here is the smartest move...

If you start by participating at the \$25 or \$50 or \$100 or \$500 or \$1,000 Litigation War Chest Fund level, I will place even more Credits, Certificates and Memberships into your account BEFORE you select the Geometric Multiplying Levels of my "Exchange in Abundance" Rewards. The more you start with in your account, the GREATER your assets will grow with the geometric multiplier you select. So select the highest level for the greatest geometric gain!

Step 1 is to select the HIGHEST level you would like to participate in Front Sight's Litigation War Chest Fund.

Remember, the more you participate at this level, the more Credits, Certificates and Memberships get placed into your account, and the greater ALL your Front Sight assets will grow when you select the highest Geometric Multiplying Level of my "Exchange in Abundance" Reward.

Step 2, once you have selected the HIGHEST level you would like to participate in Front Sight's Litigation War Chest Fund, then select the HIGHEST level you can from my Geometric Multiplying "Exchange in Abundance" Reward to gain the MAXIMUM BENEFITS!

Here is an example of how this works...

Let's say you select the \$500 Litigation War Chest Level and then select the \$5997 Geometric Reward Level for a total participation of \$6,497. First, I will add \$10,000 in Front Sight Credits, 100 Four Day Course Certificates and 100 Patriot Lifetime Memberships into your account.

THEN, those assets I added PLUS everything that is already in your account (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas) will be INCREASED 20X! PLUS I give you a Piazza Pistol in 9mm or .40S&W.

The \$10,000 in Front Sight Credits, 100 Four Day Course Certificates and 100 Patriot Lifetime Memberships placed into your account from your Litigation War Chest participation immediately becomes \$200,000 in Front Sight Credits, 2,000 Four Day Course Certificates and 2,000 Patriot Lifetime Membership PLUS I give you a Piazza Pistol, PLUS any other assets that were already in your account (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas) INCREASE BY 20X too!

So select the HIGHEST level you can at BOTH the Litigation War Chest Level AND the Geometric "Exchange in Abundance" Reward Level for the GREATEST BENEFIT POSSIBLE!

Complete the Litigation War Chest and Geometric Front Sight "Exchange in Abundance" Enrollment Form TODAY because it is time to deliver some long overdue justice to that lying, two-faced, gun-grabbing Hillary Clinton supporting, con man, Robert Dziubta and its time to dramatically grow Front Sight, and it is time to complete the Front Sight Resort ahead of schedule!

Here you go... Just check the box that is best for you in Step 1 and Step 2 below...

Secure, On-Line Rapid Enrollment Form Litigation War Chest Fund & Geometric "Exchange in Abundance" Reward With Special Gun Bonuses

STEP 1:

Yes, Dr. Piazza, I want you to destroy the lying, two-faced, gun-grabbing Hillary Clinton supporting, con man Robert Dziubta by rapidly and aggressively prosecuting our lawsuit against him to overwhelming victory. I understand that by checking the appropriate Litigation War Chest box below, you will place the corresponding amount of Front Sight Credits, Certificates and Memberships into my Front Sight account BEFORE you apply the Geometric Multiplying "Exchange in Abundance" Reward to my account, making ALL of my Front Sight assets grow that much larger.

I understand I can use the Front Sight Credits for purchases in the pro-shop, membership transfer fees, criminal background checks and special offers Front Sight provides in the future. I understand I can gift, sell or transfer the certificates and memberships to anyone I wish. I further understand that when Front Sight Resort is completed, financially self-sufficient, self-sustaining, and running like the well-oiled machine I am accustomed to experiencing whenever I attend a course at Front Sight, I will be allowed to trade my surplus Credits, Certificates and Memberships back into Front Sight for a percentage of ownership in Front Sight. I further understand that the more Credits, Memberships and Certificates I have to trade back in relative to the other members, the greater the percentage of ownership in Front Sight I will secure.

Front Sight Litigation War Chest Participation

\$10 for \$200 in Front Sight Credits, 2 Four Day Course Certificates, 2 Patriot Lifetime Memberships

\$25 for \$500 in Front Sight Credits, 5 Four Day Course Certificates, 5 Patriot Lifetime Memberships

\$50 for \$1,000 in Front Sight Credits, 10 Four Day Course Certificates, 10 Patriot Lifetime Memberships

\$100 for \$2,000 in Front Sight Credits, 20 Four Day Course Certificates, 20 Patriot Lifetime Memberships

\$500 for \$10,000 in Front Sight Credits, 100 Four Day Course Certificates, 100 Patriot Lifetime Memberships

\$1,000 for \$20,000 in Front Sight Credits, 200 Four Day Course Certificates, 200 Patriot Lifetime Memberships

Step 2

Yes Dr. Piazza I want you to geometrically increase my Front Sight Credits, Certificates, and Memberships AFTER you place the Front Sight Credits, Memberships and Certificates into my Front Sight account that I selected above with my Front Sight Litigation War Chest Participation, so my Front Sight assets have greater growth with the Geometric Multiplier I select below.

I understand I can use the Front Sight Credits for purchases in the pro shop, membership transfer fees, criminal background checks and special offers Front Sight provides in the future. I understand I can gift, sell or transfer the certificates and memberships to anyone I wish. I further understand that when Front Sight Resort is completed, financially self-sufficient, self-sustaining, and running like the well-oiled machine I am accustomed to experiencing whenever I attend a course at Front Sight, I will be allowed to trade my surplus Credits, Certificates and Memberships back into Front Sight for a percentage of ownership in Front Sight. I further understand that the more Credits, Memberships and Certificates I have to trade back in relative to the other members, the greater the percentage of ownership in Front Sight I will secure.

NOTE: You must select a level of Front Sight Litigation War Chest participation BEFORE selecting your highest level of Geometric "Exchange in Abundance" Reward.

Front Sight Geometric "Exchange in Abundance" Reward

\$497 DOUBLES all your Front Sight Account Assets (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas)

\$997 TRIPLES all your Front Sight Account Assets (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas)

\$1497 QUADRUPLES all your Front Sight Account Assets (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas)

\$1997 5X's all your Front Sight Account Assets (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas)

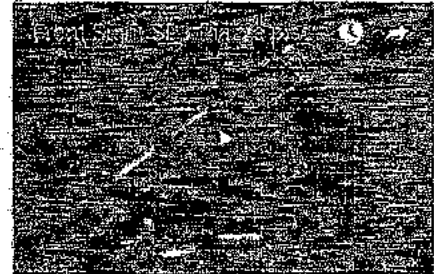
\$2497 7X's all your Front Sight Account Assets (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas)

\$2997 10X's all your Front Sight Account Assets (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas)

\$5997 20X's all your Front Sight Account Assets (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas) PLUS I'll give you a Front Sight Piazza SP1 Pistol in 9mm or .40SW

\$11,997 50X's all your Front Sight Account Assets (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas) PLUS I'll give you 2, Front Sight Piazza SP1 Pistols. One in 9mm and the other in .40SW

\$23,997 100X's all your Front Sight Account Assets (except hotel certificates, private training certificates, TBD President memberships, Vacation Club Villas) PLUS I'll give you 4, Front Sight Piazza SP1 Pistols. Two in 9mm and the other two in .40SW



STEP 3:

Fill out your membership details:

First Name:*	Last Name:*	
<input type="text"/>	<input type="text"/>	
Membership Type:* (Current)	Membership Number:* (including words/letters)	
<input type="text" value="Select Membership"/>	<input type="text"/>	
Address:*	Address 2:	
<input type="text"/>	<input type="text"/>	
City:*	State:*	Zip Code:*
<input type="text"/>	<input type="text"/>	<input type="text"/>

Email Address:*

Confirm Email Address:*

Phone:

My Front Sight Username (Optional)

Payment Information:



Name on Card:*

Card Number:*

Expiration Date (mm/yy):*

Security Code: *What's this?

[Click Here](#) if your Billing Address is Different Than Your Shipping Address.

If you would like to use multiple credit cards, call my Concierge Staff at (800) 967-7719 between the hours of 8:30am and 5:30pm PST and they will assist you in your purchase.

Because we have filed our lawsuit and the case is in litigation, the Concierge Staff will only be able answer questions about participating in the Front Sight War Chest Fund and the Geometric "Exchange In Abundance" Reward.

If after reading all of the information I have shared with you, you still have questions that only I can answer, then please e-mail me directly at DrPiazza@FrontSight.com and I will personally respond.

If after I have personally responded to your email, you still have questions that only I can answer, then feel free to call me on my cell phone at (707) 838-3450 and I will personally answer your questions over the phone. This is a private e-mail and phone number so please keep it to yourself, but feel free to use them should you really have important questions preventing you from taking full advantage of my way of honoring you for your alignment with Front Sight's purpose and your participation in our phenomenal success.

4. Confirm Your Order

Select Your Level of Participation in Front Sight's Litigation War Chest and Geometric "Exchange In Abundance" Reward above.

- I UNDERSTAND and agree that all Front Sight Products, Front Sight Certificates and Front Sight Memberships offered in the past, the present, and future, including "To Be Determined" memberships, as well as any special memberships not listed here, are NON REFUNDABLE, no exceptions. I further understand I may sell and transfer "To Be Determined" memberships, but I am not allowed to sell/transfer them to existing Front Sight members or advertise the sale of any memberships in any public media. I also acknowledge that Front Sight is not guaranteeing a specific date of resort completion or specific time when Dr. Piazza will graciously and generously turn over the ownership of Front Sight Firearms Training Institute to his loyal and supportive members, although Front Sight is making every effort and working diligently to complete construction within the next 18 months.

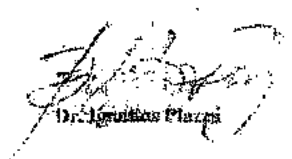
Enter the information above and press the Submit button to process your order securely.

* Required

Having Trouble? [Click here.](#)

Thanks again for your participation in Front Sight's phenomenal success!

Sincerely,



Dr. Ignatius Piazza

Dr. Ignatius Piazza
Founder and Director



I hereby request that you inform the relevant authorities and the appropriate law enforcement agencies of the above information. I understand that you are not required to do so, but I believe that you should do so. I am providing this information to you in confidence, and I request that you keep this information confidential. I am providing this information to you in confidence, and I request that you keep this information confidential.

EXHIBIT 15

EXHIBIT 15



October 30, 2018

Via FedEx and Email (rdziubla@bbs5impactcapital.com)

Mr. Robert W. Dziubla
President & CEO
Las Vegas Development Fund, LLC
916 Southwood Boulevard, Suite 1G
P. O. Box 3003
Incline Village, Nevada 89450

With a copy to:

BB5 Impact Capital Regional Center LLC
916 Southwood Blvd., Suite 1G
Incline Village, Nevada 89450

Michael A. Brand, Esq.
2924 Selwyn Circle
Santa Barbara, California 93105

C. Matthew Schulz, Esq.
Dentons US LLP
1530 Page Mill Road, Suite 200
Palo Alto, California 94304-1125

Re: EB-5 Documentation and Additional Information for the Period July 1, 2017, through October 31, 2018 Delivered Pursuant to Section 5.10(e) of the Construction Loan Agreement

Dear Mr. Dziubla:

Pursuant to Section 5.10(e)(i) of that certain Construction Loan Agreement (the "Loan Agreement"), dated as of October 4, 2016, by and between Las Vegas Development Fund, LLC, as lender ("Lender"), and Front Sight Management LLC, as borrower ("Borrower" or "Front Sight"), we hereby provide you with evidence of certain expenditures of funds reimbursed from proceeds of Advances of the Loan made during the period from and including July 1, 2017, through and including October 30, 2018, or otherwise permitted to be reimbursed from proceeds of Advances of the Loan if sufficient funds had been advanced by Lender to Borrower during the aforementioned period and/or if additional funds would be advanced by Lender to Borrower from and after the date hereof.

We present the following labeled groups of expenses:

- A. Construction costs from June 30, 2017, through and including July 1, 2018, paid from the primary operating account of Front Sight established with Bank of America, N.A. (the "Primary Operating Account"), totaling approximately US\$2,088,490

Mr. Robert W. Dziubla
President & CEO
Las Vegas Development Fund LLC
October 30, 2018
Page 2

- B. Holecek note paydown from June 30, 2017, through and including July 1, 2018, paid from the Primary Operating Account, totaling US\$1,896,000
- C. Project legal fees from June 30, 2017, through and including July 1, 2018, paid from the Primary Operating Account, totaling US\$14,116
- D. Construction costs from July 1, 2018, through and including October 30, 2018, paid from the Primary Operating Account, totaling approximately US\$402,621
- E. Holecek note paydown from July 1, 2018, through and including October 30, 2018, paid from the Primary Operating Account, totaling US\$632,000
- F. Project legal fees from July 1, 2018, through and including October 30, 2018, paid from the Primary Operating Account, totaling US\$6,984
- G. Construction costs from September 6, 2016, through and including August 24, 2018, charged to the commercial revolving charge account of Front Sight established with Home Depot, totaling US\$66,173.67, as highlighted on the attached copies of account statements
- H. Construction costs from October 11, 2016, through and including July 13, 2018, charged to the Visa credit card account of Front Sight established with City National Bank, totaling US\$43,212.07, as highlighted on the attached copies of account statements
- I. Construction costs from August 30, 2016, through and including February 20, 2018, charged to the Premier Rewards Gold charge and credit card account of Front Sight established with American Express, totaling US\$92,868, as highlighted on the attached copies of account statements

In addition to the expenses described above in A through I, inclusive, we further inform you that, on average, twelve (12) of the maintenance and/or range staff employed by Front Sight have been dedicated to construction-related projects from the time of the initial Advance made under the Loan Agreement through today. The average pay of these staff members is \$15/hour and the average work week is forty (40) hours per staff member per week. Thus, over the course of the first two (2) years since the initial Advance, this construction-related employee expense is approximately US\$748,800, excluding the additional cost of employment taxes imposed on Front Sight for the employer portion of Social Security and Medicare.

For ease of reference, the expenses described above in A through I, inclusive, together with the additional expense described in the preceding paragraph, total US\$5,990,464.74 (i.e., well in excess of the US\$3,750,000 in Advances made by Lender to Borrower from and after July 1, 2017). These expenses should not be considered exhaustive of any and all expenses incurred by Front Sight that could or should constitute "permissible" expenses to be paid or reimbursed from proceeds of Advances of the Loan.

We provide the following additional documentation, which may be of assistance in reviewing certain of the cancelled checks included in A and D above:

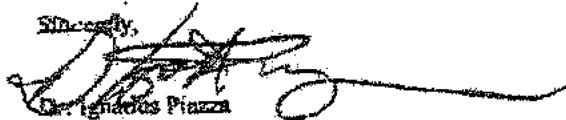
- J. Copies of contracts and work orders entered into with Top Rank Builders, Morales Construction and/or All American Concrete and Masonry from and after July 1, 2017

Mr. Robert W. Dziubla
President & CEO
Las Vegas Development Fund LLC
October 30, 2018
Page 3

K. Copies of invoices from Civilwise Services Inc., dated from and after July 8, 2017.

We expect this documentation to satisfy our obligation to you pursuant to Section 5.10(e)(i) of the Loan Agreement.

Sincerely,



Mr. Ignacio Piazza
Manager

Enclosures

cc: Mr. Michael Meacher, COO, Front Sight
C. Matthew Schulz, Esq.
Michael A. Brand, Esq.
Scott A. Preston, Esq.
Letvia M. Arza-Goderich, Esq.



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DECL
ANTHONY T. CASE, ESQ.
Nevada Bar No. 6589
tcase@farmercase.com
KATHRYN HOLBERT, ESQ.
Nevada Bar No. 10084
kholbert@farmercase.com
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Telephone: (702) 579-3900
Facsimile: (702) 739-3001

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

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

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC,
et al.,

Defendants.

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

**DECLARATION OF C. KEITH GREER
IN SUPPORT OF DEFENDANT'S
MOTION FOR RECEIVERSHIP**

Hear Date: TBD
Time: TBD

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STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss:

I, C. Keith Greer, hereby state and declare based on my own personal knowledge as follows:

1. I, am an attorney at law in good standing before State Bar of California and have been admitted pro hac vice to represent the defendants in this matter.
2. I was class counsel in the matter of *Stacy James, et al., v Ignatius Piazza, et al.*, No. C 05-04532 JW (N. Dist. Cal.2005), which was resolved with a settlement giving class members all of their damages, plus interest, and attorneys' fees.
3. Attached hereto as Exhibit A is a true and correct copy of a publication from Ignatius Piazza for Front Sight Firearms Training Institute that was discovered during the course of that litigation.
4. Attached hereto as Exhibit B is a true and correct copy of a March 20, 2007 publication from Ignatius Piazza for Front Sight Firearm Training Institute.
5. Attached hereto as Exhibit C is a true and correct copy of the Order Appointing Receiver in the matter of *Stacy James, et al., v Ignatius Piazza, et al.*, No. C 05-04532 JW (N. Dist. Cal.2005).
6. Attached hereto as Exhibit D is a true and correct copy of a publication from Ignatius Piazza for Front Sight Firearms Training Institute, published on or about January 17, 2019, and is currently posted on Front Sight's website at:
www.frontsight.com/enemyupdate/index.asp

I declare under penalty of perjury under the laws of the State of Nevada and the State of California that the foregoing is true and correct, and that this Declaration was executed on February 1, 2019 at San Diego, California.


C. Keith Greer, Esq

EXHIBIT A

October 16, 2008



**After They Attended Over 200 Front Sight Courses and
Pocketed \$830,000 Out of the First Million Dollars I
Paid Timely Into the Class Action Settlement Fund,
The Three Malcontents and Their Ambulance Chasing Attorney
Tried to Kill Front Sight and Terminate YOUR Membership
By Forcing Us into Foreclosure...**

**SO I CUT THEM
(AND THEIR FOLLOWERS)
OFF AT THE KNEES!**

In This Letter I Reveal All the Gory Details...

And Show You How the

NEW FRONT SIGHT

Turned the Tables on These Back-Stabbing Saboteurs

So I Can Now Reward YOU

Our Loyal and Trusted Members— Like Never Before!

IGNATIUS A. PIAZZA, PRESIDENT

P.O. BOX 2619, APTOS, CALIFORNIA 95001 • TELEPHONE 1.800.987.7719 • FAX 831.684.2137

For the Last 12 Years, Through EVERY Obstacle and Challenge, Front Sight Has Doubled EACH and EVERY YEAR...

In the Last 12 Months Front Sight Doubled E-Mail Subscribers, Students, Members and Revenue...

Through Recession, Dot Com Crash, 9/11, Iraq War, Real Estate Slump and Stock Market Crash, Front Sight Has Grown Bigger, Stronger, More Efficient, Offering More Courses Every Year, and NEVER Cancelled a Scheduled Class...

Our Purpose to Positively Change the Image of Gun Ownership Has Driven Us to Step Up and Lead By Example from Columbine to Virginia Tech and Beyond...

Every Week That We Offer Our Courses, HUNDREDS of Students Receive the Positive, Life-Changing *Front Sight Experience* and Walk Away Empowered, With a New Understanding and Appreciation of the Comfort of Skill at Arms...

There is NOTHING Like Front Sight ANYWHERE in the World...

Yet, Three Malcontents Who had Already Received MORE Than What They Paid for Their Memberships Did EVERYTHING They Possibly Could to Kill Front Sight and Terminate YOUR Membership Benefits By Forcing Us into Foreclosure Simply for Their Own Petty, Self-Centered, and Vindictive Reasons...

They Left Me No Choice...

To Defend You and All Our Loyal and Trusted Members, I Cut the Three Malcontents (and Those Who Supported Them) Off at the Knees...

I Formed a NEW Front Sight Entity to Flawlessly and Seamlessly Continue Your Membership Benefits, (That's Right, Nothing Has Changed for You—Just Them!) Without Missing A Step, We Continue Our Mission to Positively Change the Image of Gun Ownership in Our Lifetimes, Doubling Front Sight's Influence, Students and Members Each and Every Year...

But the NEW Front Sight Will Need Your Help... And I Am Prepared To Reward You For Your Support and Participation Like Never Before...

Yes, YOU and Our Loyal and Trusted First Family Members Are Automatically Included in the NEW Front Sight! I Want YOU to Step Up With Me and the Dedicated Staff of Front Sight to Make Sure That the NEW Front Sight Entity Launches Like a Rocket...

Yes, I'm Going to Ask You for Your Help. But As You Know, Front Sight's *Exchange in Abundance* ALWAYS Provides You with SO MUCH MORE for Your Participation and Support—and This will be the Greatest *Exchange in Abundance* to Date!

Before I Share How You Can Personally Help the NEW Front Sight Launch Like a Rocket, I Want to Reveal *The Whole Story* Of What I Have Endured at the Hands of The Three Malcontents and Their Greasy Attorney. Here are ALL the Gory Details...

Dear Loyal and Trusted Front Sight Member,

To fully understand how three members who had taken over 200 courses have systematically conspired to do everything possible to ruin Front Sight and terminate your membership for their own self-centered, petty, and vindictive reasons, I have to share a little history with you...

Back in 2005, at the height of the real estate market, I had arranged the sale of Front Sight's Master Planned Community to a seasoned, pro-gun and well financed developer who within 24 to 36 months would fully develop our master planned community— complete with one-acre home sites for our Platinum members— and finish the firearms training facility to resort quality standards!

Unfortunately I never got the opportunity to make that announcement...

On November 7, 2005 the message from my attorney read: "Naish, Call me. A class action lawsuit has been filed against you and Front Sight in Federal Court. It was announced on the Las Vegas News."

As I read the lawsuit (launched and publicized on Las Vegas TV News) which was pieced together like a tabloid newspaper complete with outright fabrications about Front Sight twisted, spun and embellished into the most outrageously negative and damaging claims you can imagine, my thought was— "These idiots. They have no idea what they have done. They just killed the completion of Front Sight for their own petty, self centered, personal gain. This will set our efforts back ten years! What the anti-gun crowd could not do to us in the media, three of our own have done..."

Sure enough. Shortly after the lawsuit was launched on the Las Vegas TV News and Internet website, I received a letter that read... "Dr. Piazza, this letter is to inform you that we must withdraw our \$30 million dollar offer to purchase and develop the 478 acre Master Planned Community... It would be unwise for us to proceed with the purchase of a property tied up in litigation..."

As I shook my head at the letter, I thought, "Surely the three who filed the lawsuit, making such hostile, outrageous claims in the most aggressive public manner possible must have known that their irresponsible actions would prevent me from ever completing Front Sight. This does not make any sense at all. Why would they do this?"

My answers would come shortly thereafter when the dirt bag attorney representing the three members called my legal counsel and asked, "Is Piazza going to pay us to go away?"

It became very clear, very quickly that the lawsuit was about one thing and one thing only...Money... Lots of Money... Millions!

Front Sight Has Never Been About Money to Me— Front Sight is About Purpose

Front Sight has never been about money to me. Yes, Front Sight was appraised at 45 million dollars at the time, but the majority of our money was tied up in our land, water rights, and infrastructure—exactly where it should be so we could attract the right developer and leader to complete the project for the benefit of all.

Our money is also in our award-winning, *Front Sight Story, Chapter One: Your Legacy* DVD. Every month mailing it free to thousands of people to spread our message throughout the country so others like us could find out in a very professional and compelling manner what Front Sight is really all about.

Our money is about pushing Front Sight's PURPOSE to positively change the image of gun ownership in our lifetime and serving our loyal and supportive students and members with world-class firearms training. Our money certainly was NOT to pay-off three malcontents who collectively had already taken over 200 courses from us!

If it doesn't make you "mad as hell" that three of our own people... who attended twenty times more courses than the average member and received more value than they paid for their memberships, would file a lawsuit to try to kill our ability to complete Front Sight, **AND THEN ASK FOR MONEY TO "GO AWAY"...** STAND BY, IT GETS WORSE...

I ended up in Judge James Ware's Courtroom. Judge Ware is known as The Lying Court Judge (See Google Search) because for years he told the story of being a young black boy walking down a dusty road in the South with his brother Virgil Ware when a white man in a truck drove up and shot his brother Virgil dead! It is true that a Virgil Ware was shot and that he had a brother named James Ware, BUT IS WASN'T Judge James Ware! The REAL James Ware, who was the brother of Virgil Ware is a sanitation worker! It seems Judge James Ware assumed his identity for his own professional and personal gain, telling this story as a speaker at law and civil rights functions for years until a reporter looked into it and caught him red handed in the big lie.

So I'm sure you can imagine what type of reception and rulings I received from the anti-gun, Lying Court Judge! Before our very strong and detailed Motion to Dismiss was ever heard, Judge James Ware responded from the bench with rulings adversely affecting Front Sight which forced us into settlement on a "Class Action" that was never even proven or certified!

Initially, when I was bent over the barrel by Judge Ware and forced to accept a settlement, all members at the time were given the opportunity to get ALL their money back AND retain their memberships! Yeah, as I said, I was bent over a barrel. Imagine, The Three Malcontents taking over 200 courses, getting all their money back, and keeping their memberships! Where's the justice in that? Ask the Lying Court Judge!

Well my loyal, supportive, and ethical members (over 97% of the membership) did not even respond to the settlement offer and I was able to PROVE to the Lying Court Judge by the lack of participation of the so called "Class Action" that the whole thing was a sham. Still, he would not dismiss the case. Instead he assigned a "Special Master" (Judge Ware's old law partner at \$500 per hour) to make sure the settlement was "Fair" which meant it would cost us about another \$100,000 in fees but we had an opportunity to renegotiate the settlement and send it out again to the entire membership.

This time, the Final Settlement DID NOT allow participants to keep their memberships once they received a refund. As a result, the number of members participating in the "Class Action" dropped even more.

But now that The Three Malcontents could not keep their memberships, their actions toward you, me, and the other members who supported Front Sight turned more sinister...

The Final Settlement Agreement Required Front Sight to Pay 10% of Its Revenue Every Month into a Settlement Fund That Was *Supposed* to be Distributed Among the Members Who Participated in the Class Action— A Total of Less Than 3% of Front Sight's Membership... In other words, more than 97% of Front Sight's Members were like you and wanted nothing to do with such a "Class Action" scam. (Your Loyalty and Support are Now Paying Off BIG for YOU!)

The security for the settlement was solely a lien that the judge allowed the class action attorney to file in second position behind a first mortgage that Front Sight had secured with a very supportive member who has a long and favorable history with Front Sight. Our First Mortgage Holder is a real friend and hero of you, Front Sight, and the Second Amendment. He was patiently waiting— throughout all the crap that the Class Action Idiots created— for us to refinance the project toward completing the firearms training facility, securing construction permits to build the hotel, first set of time share condos, and to pay him back...

HERE IS WHERE I LEARNED THE *HIDDEN, TRUE INTENT* OF THE THREE MALCONTENTS AND THEIR CONNIVING ATTORNEY...

In negotiating the Final Settlement we agreed to pay 10% of our revenue into the Class Action Settlement Fund and to take one year to secure financing to pay off the Class Action in full. We asked for two years in the negotiations to make sure we had plenty of time to secure the financing toward completing the project, pay our friendly First Mortgage Holder and the remaining balance on the class action settlement but were told that they would only accept one year initially. But if we paid them without fail, they would certainly extend the terms for another year. THEY emphasized that it would be foolish for them not to extend...

So we began the payment stream and quickly placed OVER ONE MILLION DOLLARS into the settlement account while we lined up the first of what would prove to be several funding sources for the refinance and project completion loan.

Now please understand that when a lender gives a commitment to fund, the commitment is only provided for a very specific and short window of time. You must act on the commitment and close the loan or they simply withdraw the commitment and loan to someone else—especially in the current real estate lending environment.

The first financing we arranged was a two part funding with two different lenders working together on the loan. When we brought the deal to the Class Action Attorney and asked The Three Malcontents to allow the First Mortgage Holder to be partially paid with the first loan so everybody could be paid in full from the second loan, they used a variety of excuses and stall tactics to burn up weeks of time and ultimately refused to comply which caused us to lose both loans! I could not believe it! They sabotaged our funding!

THEN IT FINALLY SUNK IN. The Three Malcontents REALLY DID NOT WANT US TO PAY OFF THE CLASS AND SECURE FUNDING TO COMPLETE THE PROJECT. Why? Because they had already received more value for their memberships than they paid by taking over 200 courses and if we succeeded in paying off the Class Action Settlement and securing funding to complete the project, THEY WOULD BE EMBARRASSED AND PROVEN TO BE WRONG in a BIG WAY!

I confronted their attorney about this and he confirmed that Yes, if Front Sight paid off the Class Action Settlement and completed the project, his clients would have major egg on their faces.

This scenario played out in the same way several times as the lending market continued to deteriorate more and more each month and we moved closer and closer to the one year term of the class action lien payoff... **The final straw was about to fall and the shocking true motives of The Three Malcontents and Scheming Attorney were about to be exposed...**

As the Lending and Real Estate Market Continued to Deteriorate and We Moved Within Weeks of the One Year Term of the Class Action Payoff, We Received a Straight Forward Funding Commitment From a Lender Ready, Willing and Able Fund the Project...

This funding had ABSOLUTELY NO DOWNSIDE for the Three Class Action Steoges and Their Slimy Attorney. The funding provided for money to pay off the First Mortgage Holder, complete the construction permits, fund marketing, and provided a reserve account for interest payments until the same lender could take out this loan to fund the complete construction of the facility, hotel and first phase of time share condos.

WITH THE INTEREST RESERVE IN PLACE THERE WAS NO WAY THE CLASS ACTION SETTLEMENT WAS IN JEOPARDY BY EXTENDING THE TERMS OF THE SETTLEMENT PAYMENTS AND ALLOWING A NEW FIRST MORTGAGE TO BE PLACED ON THE PROPERTY FOR TWO YEARS. After all, they said they would extend as long as we paid 10% of our revenue into the Class Action Settlement Fund and we had done so without fail...

When we brought the terms of this funding to The Three Malcontents and Their Slippery Attorney, the response was NO! THEY WOULD NOT EXTEND THE TERMS OF THE JUDGMENT LIEN AND WOULD FORECLOSE ON THE FIRST DAY AFTER THE JUDGMENT LIEN REACHED ONE YEAR— WHICH WAS OCTOBER 16, 2008—just a few weeks away at the time of our discussion!

I Could Not Believe It! At this point, EVERYONE involved including me, my legal counsel, the First Mortgage Holder, and even the Special Master told the Three Malcontents and their Back-Stabbing Attorney that failing to extend the terms of the judgment and allow this funding to occur was ABSOLUTE SUICIDE for the Class Action Participants because they were FORCING the First Mortgage Holder, a true friend and hero of ALL Front Sight students and members, to foreclose to protect his first position lien on the property.

If the First Mortgage Holder Foreclosed, The Following Would Occur to the Class Action Participants:

1. Front Sight was no longer obligated to pay ANY further money into the Class Action Settlement Fund!
2. Class Action Participants, who were still being allowed to attend courses until the Settlement was fully funded, would have their memberships made null and void and be banned from Front Sight!
3. Per the Settlement Agreement which was negotiated by The Three Malcontents and Their Foolish Attorney, the entire case was closed with the only security the Class Participants had being the Judgment Lien in second position behind the First Mortgage Holder!
4. If the First Mortgage Holder Foreclosed, the Class Participants' Judgment Lien in second position is WIPED OUT at the foreclosure sale when a new Front Sight Entity purchases the first mortgage!

The First Mortgage Holder even called the Special Master, PLEADING for him to intervene and explaining there was no downside for anyone in extending the terms of the judgment lien and allowing the funding to occur, but if he was forced by the Class Action Attorney to foreclose to protect the interest of his first mortgage, and a NEW Front Sight entity purchased the property at the foreclosure sale, all the new entity has to do is pay the amount owed on the first mortgage and the class action judgment is wiped off the property! The Special Master agreed with everything and said that although it was in everyone's best interest for the Class Action Attorney to extend the terms of the judgment lien and allow the funding to occur, the case was closed and he no longer had any power to intervene.

At this point, I even offered to increase the percentage Front Sight was paying into the Class Action Settlement Fund from 10% per month to 20% per month to ensure that the Class Participants would be paid in full within two years so nobody was left out in the cold. All The Three Malcontents and Their Irresponsible Attorney had to do was simply extend the terms of the judgment and allow the funding to take place!

UNBELIEVABLY, Their Response Was Literally, "WE DON'T GIVE A SHIT!"

"WE DON'T GIVE A SHIT!"

How in the world could the Class Action Attorney and his Three Clients WHO ARE SUPPOSED TO REPRESENT THE BEST INTEREST of the members they lured into participating in the Class Action Settlement, make a statement like, "We Don't Give a Shit!" AND force a foreclosure to take place that halts regular monthly payments into the Class Settlement Fund, totalling millions of dollars per year, bans all Class Action Participants from any further courses and runs the risk of wiping the only security the Class Action Participants had right off the property?

When I asked this question aloud, and verified the amount of money I had placed into the Class Action Settlement Fund, the answer became VERY CLEAR.

The Class Action Attorney and His Three Malcontents Had Already Raided the Class Action Settlement Fund and Taken \$830,000 Dollars of the First One Million Dollars I Had Paid for the Class Action Settlement Participants!

No Wonder the Class Action Attorney and His Three Malcontent Clients "Don't Give a Shit!"

The Three Malcontents had already taken over 200 courses, received more value for their memberships than they had paid, and received their "Plaintiff Cash Bonuses!"

The Class Action Attorney Had Already Received HIS FEE of \$800,000 OUT OF THE MONEY SET ASIDE FOR THE SETTLEMENT!

AND MOST TELLING OF ALL is the fact that if Front Sight received ANY of the loans it brought to the table during the last year, then Front Sight Succeeds and THAT was not tolerable for The Three Malcontents!

The Three Malcontents and Their \$800,000 Richer Attorney Were Willing to Sacrifice the Best Interests of Everybody! They Tried to Kill Front Sight and Terminate YOUR Membership ALL for Their Own Petty, Self-Centered, and Vindictive Reasons By Refusing to Simply Extend the Terms of the Settlement— Forcing a Friend and Hero of Front Sight Students and the Second Amendment to Foreclose October 15, 2008...

YES, It Happened on October 15, 2008

And I Am Sending You This Letter the Very Same Day to Show You How I Cut Them (And Those Who Supported Them) Off at the Knees, Formed a NEW Front Sight Entity to Flawlessly and Seamlessly Continue Your Membership Benefits Without Missing A Step, AND Continue Our Mission to Positively Change the Image of Gun Ownership in Our Lifetimes By Doubling Front Sight Year after Year...

I know, 99.9% of all businesses and organizations faced with this situation would simply throw up their hands, fold the tent, and try to hide from their customers. Not Front Sight! With every challenge and obstacle we have faced, we just get bigger and stronger. This is no different!

Before I Reveal EXACTLY What We Are Doing and How You Can Help Us Launch the NEW Front Sight Entity Like a Rocket, Take a Look the Result of Every Major Obstacle We Have Encountered in Our 12 Year History...

Here is the RESULT of Every Major Obstacle And Challenge Front Sight Has Faced... We Double in Strength and Size!

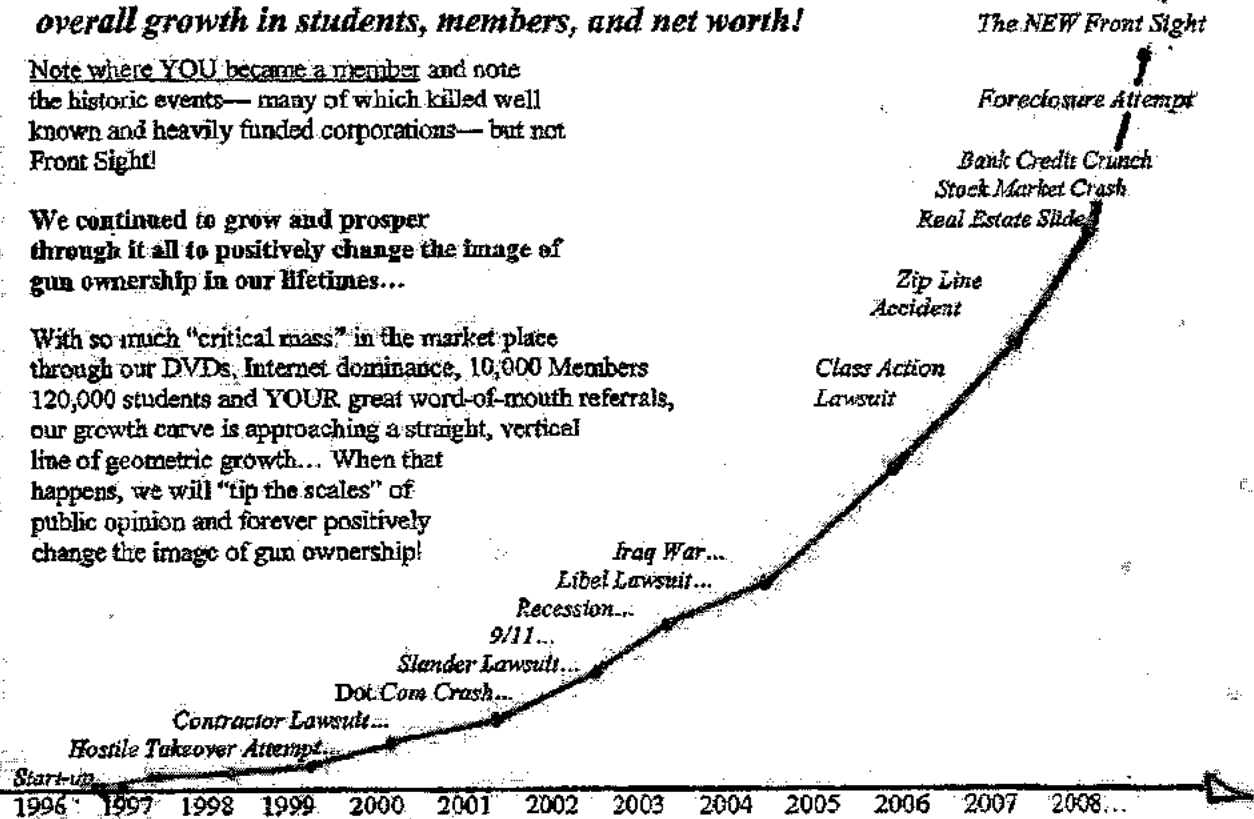
(Look What We Have Been Through and Look Where We Are Going...)

This is the REAL statistical curve reflecting our overall growth in students, members, and net worth!

Note where YOU became a member and note the historic events— many of which killed well known and heavily funded corporations— but not Front Sight!

We continued to grow and prosper through it all to positively change the image of gun ownership in our lifetimes...

With so much "critical mass" in the market place through our DVDs, Internet dominance, 10,000 Members 120,000 students and YOUR great word-of-mouth referrals, our growth curve is approaching a straight, vertical line of geometric growth... When that happens, we will "tip the scales" of public opinion and forever positively change the image of gun ownership!



Over a twelve year period, nothing but amazing growth in the face of huge challenges, obstacles, adversity and attacks... Yes, there have been some tight spots in the last 12 years and very unpleasant issues that I have had to deal with. For each bad thing that has happened, there have been hundreds of good things that we have created. The absolute most difficult times were in the early years when we did not have a large and rapidly growing student and member base. As our organization grows in numbers, we become stronger and more resistant to those who try to hurt us.

ALSO NOTE: This real growth curve reflects us essentially DOUBLING our contacts, students, members, and national influence each year since our inception! This type of growth cannot happen in such a controversial industry as ours, and in the face of so many obstacles as we have faced, without the strongest of purpose, persistence, unity, and integrity throughout the entire Front Sight organization.

Now Turn the Page to Find Out Exactly What Front Sight Has Done to Protect You... And How I Will Reward YOU Like Never Before for Your Help and Participation...

In Every Obstacle, Challenge, or Attack There is HUGE Opportunity for the Strong Willed and Stout Hearted!

When The Three Malcontents and Their Money Grubbing Attorney showed their true colors by forcing our friend and hero of Front Sight to foreclose on October 15, 2008, they really gave YOU and US a blessing in disguise, saving us millions of dollars and allowing us to shed any and all liabilities through a foreclosure sale.

Here is what we did to protect you and your membership and come out bigger, better, and stronger...

1. A day before the foreclosure was filed, we formed a NEW corporate entity called **Front Sight Management II, Incorporated.**
2. The NEW, Front Sight Management II, Incorporated signed a **99 Year Lease** with the old Front Sight entity, leasing the land, water rights, entitlements, equipment, weapons, licenses, trademarks, copyrights, intellectual property, Internet sites, accounts, etc. **Every asset that the old Front Sight had is now leased by the new Front Sight entity.**
3. **The New Front Sight has no obligations of the old Front Sight (which is in foreclosure), therefore the New Front Sight is no longer obligated to pay ANYTHING to the Class Action Settlement and is no longer obligated to provide courses for anyone who sided with The Three Malcontents and filed claims against Front Sight.**
4. **While you are reading this letter (and smiling), the unfortunate ones who were lured by the \$800,000 richer Class Action Attorney into participating in the Class Action Settlement are reading a letter that informs them they are forever banned from Front Sight, will not receive another penny from Front Sight and should consider filing a malpractice claim against the Class Action Attorney to recover their damages! Imagine the headaches he is going to have when a couple hundred people sue him for malpractice! I would imagine The Three Malcontents may also get sued for their part in failing to protect the best interests of their fellow Class Action Participants.**
5. **As one of the loyal and trusted members, the NEW Front Sight WELCOMES YOU under the same membership terms and conditions you had under the old Front Sight with a seamless and flawless transition. In fact, if I had not sent you this letter, you would never have noticed any change at all. As an example, the NEW Front Sight is training over 400 students this weekend alone with nine, full handgun ranges operating and several other courses running simultaneously!**
6. **Several months from now the foreclosure process will reach a foreclosure sale and the NEW, Front Sight Management II, Incorporated or another entity we create will purchase the first mortgage from our friend, the First Mortgage Holder and the Class Action Judgment Lien will be wiped out along with any other liabilities associated with the then defunct, old Front Sight entity.**

Now, I can already hear the Slick Talking Class Action Attorney trying to quell the riot he has caused with all the Class Action Participants who lost every dime AND their memberships while he pocketed \$800,000 of the money I paid into their Class Action Settlement Fund!

He is going to try to sell them a line of crap that he has a lender or a buyer for the property who is going to step up at a foreclosure sale and not only pay the first mortgage off, but also pay the class action settlement balance.

THAT is a Fairy Tale and Here's Why...

Throughout This Entire Class Action Fiasco, ALL the Claims, Accusations, and Outright Fabrications Thrown Around By The Three Malcontents and Their Parasitic Attorney Have Proven to be as Hollow as Their Souls.

NOTHING That They Claimed Was True. When Push Came to Shove They Sabotaged Everybody When All They Had to Do Was Simply Extend the Terms of the Settlement Agreement and Their Participants Would Still be Getting Paid Each Month and Still Taking Courses Until Paid in Full!

Now, to save his own hide he is going to try to sell an angry mob a line of crap that he has a lender or a buyer for the property who is going to step up at a foreclosure sale and not only pay the first mortgage off, but also pay the class action settlement balance.

THAT is a Fairy Tale and Here's Why...

There is only one buyer who is going to step up and purchase the first mortgage at the foreclosure sale and that buyer is a Front Sight entity. Why? Because there is only value, equal to the amount of the first mortgage owed on the property, **IF FRONT SIGHT OWNS IT.**

Without the water rights, which are in Front Sight's name and would revert back to the State of Nevada if Front Sight did not continue to develop the property, all you have is dirt in the desert that you can't develop and does not equal the value of the first mortgage.

Without the Zoning, Planning, and Tentative Map Entitlements, which are in Front Sight's name and are only viable plans because Front Sight brings thousands of students out for our courses each month, all you have is dirt in the desert that you can't develop and does not equal the value of the first mortgage.

Without Front Sight's growing organization of nearly 10,000 Loyal Members and 120,000 Supportive Students, who regularly attend our courses, there is no reason anyone would purchase the land and simply hold on to it until dirt in the desert (that you can't develop because you don't have our water rights, entitlements, and student base) become viable enough to sell or develop.

No bank or private lender, with the Las Vegas real estate market having the most foreclosures in the country and big named developers filing bankruptcy or walking away from their own projects, is going to loan on raw land to anyone other than **FRONT SIGHT.**

I know what it takes to secure a loan, as we were able to bring loans to the table only to have the Class Actions Idiots sabotage them. Without everything that Front Sight brings to the table with Water Rights, Zoning and Planning Entitlements, cash flow to service the debt, and thousands of members and students each month attending our courses, nobody is going to get a loan except Front Sight to purchase the first mortgage balance. And **NOW** we do not need to involve the Class Action Morons at all!

On top of all this, **NOBODY** will touch this property knowing the liability and potential threat of 10,000 Front Sight Members ready to file lawsuit after lawsuit to protect their memberships and **PREVENT** a buyer **OTHER THAN** a Front Sight Entity from purchasing the first mortgage at a foreclosure sale!

Now Go Back and Look at Page 8 Again... Read the line, "As our organization grows in numbers, we become stronger and more resistant to those who try to hurt us." Do You Now See **WHY**, With **YOUR** Help and Participation, We Will Do What We Always Do and Emerge Bigger and Stronger Than Ever Before?

*In Every Challenge There is **HUGE** Opportunity for Those with a Stout Heart and Strong Will...*

Now Let Me Reveal **YOUR Huge Opportunity** for Helping the **NEW Front Sight...**

Because YOU Are a Proven, LOYAL, TRUSTED, and SUPPORTIVE Member of Front Sight...

AND Because the *NEW Front Sight* is Savings MILLIONS of DOLLARS by Cutting the Class Action Idlots Off at the Knees...

I Am Taking FULL ADVANTAGE of "Front Sight's Blessing in Disguise" to WELCOME YOU Into the *NEW FRONT SIGHT* by Providing You With the ABSOLUTE, Most Unbelievable, Greatest *Exchange in Abundance* EVER OFFERED TO DATE!!!!

No Exaggeration!

I Want to LAUNCH the *NEW FRONT SIGHT* in Such an AMAZING WAY that EVERY Loyal, Trusted, and Supportive Member FULLY Participates to Receive the GREATEST Front Sight *Exchange in Abundance* Ever Offered!! (And I Want EVERYBODY Watching to be Green With Envy at YOUR GOOD FORTUNE!)

EVEN MORE UNBELIEVABLE: When You Read What I Have Created for You, You Will SEE WITH YOUR OWN EYES, That If You Act Immediately, This GREATEST *Exchange in Abundance*, is Essentially FREE OF CHARGE FOR YOU!

WARNING:

This *NEW FRONT SIGHT Exchange in Abundance* Offer is So Unbelievable and So Over-the-Top-in-Value, It Can Only Be Offered AS A BONUS TO CURRENT LOYAL, TRUSTED, AND SUPPORTIVE MEMBERS...

In other words... YOU WOULD NOT EVEN SEE THIS OFFER IF YOU HAD NOT ALREADY BEEN WISE ENOUGH TO SUPPORT FRONT SIGHT THROUGH BECOMING A LOYAL AND TRUSTED MEMBER.

YOU are WELCOMED into the *NEW FRONT SIGHT* under the level of membership you currently have and the payment program you selected. YOU LOSE NOTHING.

THIS OFFER is a BONUS that I am making so compelling, so easy, so friendly, and so over-the-top-in-value that you will be pleased and proud to participate to Improve Your Membership Position with the *NEW Front Sight* AND HELP US LAUNCH the *New Front Sight* like a rocket by DOUBLING Our Loyal and Supportive Memberships!

See the Next Page and Prepared to be FLOORED at Your Good Fortune...

EXHIBIT B

March 20, 2007
Dr. Ignatius Piazza
Founder and Director



Judge James Ware Orders Me to STOP
Communicating with YOU—My Ethical,
Loyal, and Supportive Members!

Yes, It's true. I have been ordered by
Federal Court Judge James Ware
(you really need to Google Search his name)
to stop all communication with
you about the lawsuit and settlement.

That's why I had to black-out the
first page of this letter I had written to
share with you the inside story of what's been
going on since my last correspondence with you.

Rest assured that you are receiving this letter because
you are now part of the First Family Members I
am affectionately referring to as the Loyal 97%!

And for your ethical and loyal support,
I am doing something I have never done before
and will never be able to do again... so please...
read this entire letter and respond today
so I can reward you like before!

Sincerely,

[REDACTED]

Dear Loyal First Family Member,

Congratulations and thank you!

[REDACTED]

You sent a

[REDACTED]

[REDACTED]

You showed

[REDACTED]

so read the rest of this letter for MORE GREAT NEWS and Respond
Immediately to take advantage of my most heartfelt, most spectacular demonstration of "thanks and
gratitude" that I could ever create to reward you for your honorable, ethical, and loyal support!

Turn Page to See If We're Moving to a Secret Location or Staying Put
PLUS Enjoy My Absolute Greatest "Thank You" Ever!

IGNATIUS A. PIAZZA, PRESIDENT

P.O. BOX 2619, APTOS, CALIFORNIA 95001 • TELEPHONE 1.800.987.7719 • FAX 831.694.2137

**Front Sight Stands It's Ground!
We'll Remain at Our Current Location
To Complete a NEW, Bigger and Better
Training Facility and Master Planned Community!**

I know you wanted to hear this good news as soon as possible. It was also my preference to remain at our current location because it is such a great spot and we have placed 10 years of our blood, sweat and tears into it—plus over 20 million dollars in construction infrastructure!

As soon as the developer who had the first shot to perform on the purchase of the property and relocation of Front Sight to a new facility north of Pahrump failed to meet the final closing deadline, our obligation to that contract expired and I immediately met with the back-up company to joint venture and manage the complete redesign of a new, bigger, and better training facility and master planned community right where we stand! No moving anywhere but DP for Front Sight!

**You Can Expect a Much Greater Variety of Choices in the
NEW Front Sight Nevada Master Planned Community...**

The new plans being drawn include hotel rooms, commercial centers, spa facilities, condos, town homes, and single family residences on 1/2 acre to one acre parcels. We will also joint venture some benefit packages with other recreational venues in the Pahrump and Las Vegas areas for our members and residents, making your participation with Front Sight better and better.

**Look for the New Site Plans and Architectural Renderings
to be Available in the Next Three to Six Months.**

As one of the Loyal 97%, I want to keep you informed as much as possible along the way to developing and completing Front Sight, NV—the Safest Town in America.

This is a Very Big Project

This is a very big project—much bigger than what I originally envisioned—yet still keeping with our mission to create a community of like-minded, law abiding citizens trained to levels that far exceed law enforcement and military standards as a beacon of safe and responsible gun ownership.

Our future master planned community with an entire population comprised of skilled gun owners living and vacationing around every imaginable type of gun, yet experiencing no accidental shootings and no crime will be the place that everyone and anyone can point to as not only the way America could be or should be, but the WAY IT IS at Front Sight, Nevada!

**You Should be Very Proud to be Among Those Patriots— The Loyal 97%
Who Can See the Vision and Maintain Their Purpose In Supporting
Front Sight to Completion.. Even Through All the Challenges,
Obstacles, Delays and Attacks We've Faced and Overcome.**

**Turn the Page to be Totally Floored and Astounded By
My Greatest "Thank You" of All Time EXCLUSIVELY for the Loyal 97%...**

Become a Diamond *Elite* Member

If YOU Are Receiving This Offer, Then YOU Are Among the Loyal 97% and Have the Never-Before-Offered (And Never-To-Be-Offered-Again) Opportunity To Distinguish Yourself Above All Others at Front Sight By Securing a Diamond *Elite* First Family Lifetime Membership And Cash In on Everything You Have Purchased to Date!

Yes, It's True!

This is One of Those Life Experiences That Confirms...
 In the End, the Truth Will Prevail and the Good Guys Do Win!
 It Pays to Be Honest, Have Integrity, and Purpose for a Greater Cause!
 When Given the Chance, Most (97%) People Will Do the Right Thing!
 Your Actions Prove I Was Right to Believe in YOU!

Before I unveil how you can secure the Diamond *Elite* First Family Lifetime Membership I have created for you, allow me to explain the 5 Reasons WHY this *ELITE* level of membership was designed with you in mind.

Reason WHY #1: Because you did the right thing by supporting Front Sight in the best manner possible during one of the most challenging periods in our atomic history, I want to create a class of members that will be forever known as the Loyal 97%. So I am going to give you an unforgettable, unbelievable, unheard of opportunity to become a Diamond *Elite* Member that automatically double rewards you to the full financial level of your participation with Front Sight!

Reason WHY #2: Because you have distinguished yourself through your actions of support for me and Front Sight, I want to give you the opportunity to publicly distinguish yourself every time you visit Front Sight and position yourself to double the value of your financial participation with us!

Reason WHY #3: Because I want a Front Sight Master Planned Community and Front Sight Training Facility filled with the right people, the deserving people, the loyal people— people like you! I know I can count on you to keep Front Sight's purpose to positively change the image of gun ownership in mind, body, and spirit for generations to come just as you can count on me!

Reason WHY #4: Because I want it to be known and recognized whenever you run into anyone who chose NOT to support Front Sight and our purpose the way you have, that you ultimately benefited greatly and amazingly for doing what was right when you could have easily taken the opposite position.

Reason WHY #5: Because I want you to know by my actions that even when I am taking repeated shots to the body and head, the Rocky Balboa of the Firearms Training Industry knows he has your support and that gives me the strength and determination me to keep throwing punches in the center of the ring until we achieve our knock-out victory!

See the Next Page For ALL the Amazing Benefits of Diamond *Elite* Status and How Easy You Can Become a Diamond *Elite* Lifetime Member...

Become a Diamond *Elite* Lifetime Member

Here Are ALL The Unbelievable Benefits and Amazing Bonuses
In My Greatest "Exchange In Abundance Thank you " Ever Offered!

The All-Inclusive, Diamond *Elite* Lifetime Membership Benefits:

- **ALLOWS YOU TO ATTEND ANY COURSE HELD AT FRONT SIGHT FREE OF CHARGE, AND AS MANY TIMES AS YOU WISH, FOR THE REST OF YOUR LIFE...** Attend ALL our firearms courses; martial arts courses; rope, rappel, and climb courses; defensive driving, executive protection courses, and any other courses we develop in the future... With this membership you have opportunity to achieve a level of skill at arms that exceeds 99.99% of the people who carry a gun for a living and that includes SWAT and Military Special Operations. You will forever walk with a quiet sense of pride and comfort, knowing you can handle yourself in any violent attack or lethal encounter. Your gun handling, speed, marksmanship, and tactical skills will extremely impress ANYBODY and EVERYBODY you train with. People will walk up to you at the range, see your new, *Elite* First Family Hat and ask how you got so fast and so good!
- **Attend the Annual, Two-Day Secrets of the Ultra Successful Event Free of Charge...** Hold during our annual July 4th First Family Reunion, learn the Philosophies, Principles, Strategies, and Tactics of the Ultra Successful as I share with you the distilled and proven Secrets of Success I have spent over \$800,000 and 20 years learning, plus the latest and greatest techniques I'm employing in the phenomenal business growth of Front Sight. As others who have attended will attest, once you learn the "Secrets of Success," your business and personal life will never be the same!
- **Guaranteed Placement in Any Course with Two Weeks Advance Enrollment...** No worries about whether you can "get into a course." Your spot is guaranteed in any course we offer. Just fax or e-mail your *Application for Training* within two weeks of the course date and you are in! Like everything else we offer, no other school can offer you such flexibility with your scheduling!
- **40% Savings on any Products Purchased from Pro Shop, Gunsmith, and Armory...** No need to check ammunition through the airport or load down the trunk of your car with cases of ammo. Just show up for your course and purchase all your ammo and gear from us knowing your 40% savings is giving you another great Front Sight deal! This is better than owning your own sporting good store!
- **Free Use of Front Sight's Private First Family Ranges...** Plan a day or two before or after your next Front Sight course to enjoy use of your private ranges. Practice rapid assumption of the shooting positions, multiple targets, presentation from concealment— all the stuff they don't let you do at the public range— with privacy and at your own pace and enjoyment!
- **Free Locker Rental in Front Sight's Armory...** When completed you will be able to store your guns instead of transporting them to and from your courses saving you time, headaches, and hassle!
- **Invitation to Annual July 4th Lifetime Members' Reunion Celebration...** So you and your family can celebrate July 4th each year in a manner that makes our Founding Fathers proud!
- **Name Etched in First Family Monument...** So generations from now, your grandkids will know you were part of the patriotic group who built Front Sight!
- **Password to Access Exclusive and Restricted First Family Areas of Web Site and E-Mail Forum...** Now you can positively converse with all of our like minded First Family members!

THERE'S SO MUCH MORE...

MORE Diamond *Elite* Membership Benefits That Distinguish YOU Above All Others Plus Doubles the Financial Value of Your First Family Membership Participation...

- **Diamond *Elite* First Family Card...** A card identifying you as one of the Loyal 97%, one of the First Family *Elite*—a member who stood your ground with us and did the right thing for the betterment of the Front Sight organization!
- **Special *Elite* First Family Hat...** Identifying you to all students and staff as one of the Loyal 97%! One of the First Family *Elite*—a supportive patriot assisting us in positively changing the image of gun ownership in our lifetime!
- **Special *Elite* First Family Pin...** So you can tell your Loyal 97% Story to everyone who asks, "What does that pin signify?" This way your noble and honorable actions will always be remembered!
- **Special "Pre-Public-Pricing" of All Residential Offerings in Front Sight's NEW Master Planned Community...** As an *Elite* Member, before any residential units in the Front Sight Master Planned Community are offered to the public, you will be invited to a special "*Elite Member Only*" Insiders Opportunity to secure "Pre-Public-Pricing" on ANY of the residential units— from condos, to town homes, to ¼ acre, half acre, and one acre home sites with finished single family homes! You get to select before the public gets to see! That means you get the best and save the most! This benefit alone could mean tens of thousands of dollars to you!
- **Apply Every Dollar You Have Paid Into Your Membership Toward a Residence in Front Sight's Master Planned Community... This is not a misprint... I'll write it again to prove it... Apply Every Dollar You Have Paid Into Your Membership Toward a Residence in Front Sight's Master Planned Community... Yes! It's true. When it is time to invite you to the "*Elite Members Only, Pre-Public-Pricing Event*" not only will you get the first opportunity to secure a residence of your choice, before the public see them and at pre-public-pricing, you will get to apply every dollar you have paid for your training membership directly to the price of the residence you chose! This **DOUBLES** the value of whatever you have paid for your training membership to date!**

I know... You can't believe it. You are wondering WHY am I doing this? So go back to the third page where I tried to explain the Five Reasons WHY and instead of skimming through them like you did previously, really read what I wrote and truly feel how I feel about you and WHY I want to distinguish and reward you for what you have done for me and Front Sight...

OK Did You Re-Read the 5 Reasons WHY?

Does it Now Make Sense to You?

Well Here's Three More Reasons WHY:

I Can Do It... You Deserve It... It Pisses Off Our Common Enemies!

Turn the Page For 7 Equally Unbelievable Bonuses I Have for You...

Here Are 7 Amazing and Spectacular Bonuses— That I Can Never Offer Again And Will Absolutely Floor You In Their Generosity IF You Can Respond Immediately... Before the Bonuses are Gone!

Bonus #1: When you enroll as an All-Inclusive Lifetime Diamond Elite Member, I will Upgrade Your Current Membership to the Next Membership Level FREE OF CHARGE! I want YOU to enroll into a Lifetime Diamond Elite Membership (in an unbelievably affordable manner) and I will then take your old membership and upgrade it into one of four different levels of membership. Whatever level you are currently at will get upgraded into the closest, higher level of the four memberships. — Challenge, Legacy, Bronze, Silver or Diamond. This bonus is worth a minimum of \$4,000 and depending on your current level could be worth upwards of \$50,000! So Call Today Before This Offer Sells Out!

Bonus #2: When you enroll immediately as an All-Inclusive Diamond Elite Lifetime Member, I will make your old, upgraded membership "To Be Determined" so you can sell, transfer or gift it to anyone you wish with NO TRANSFER FEE! This is another bonus worth up to \$25,000 depending on your current level of membership because you do not have wait for me to offer a resale program and you do not have to pay any transfer fees! The only restriction is you cannot advertise it in any public media. This "To Be Determined Membership" with no transfer fee is for a family member, friend, shooting buddy, co-worker or anyone you personally know who would make a great First Family Member. Secure it now!

Bonus #3: When you enroll immediately I will add the Alaska Supplement to your new, All-Inclusive Lifetime Diamond Elite Membership so you can attend any course we offer at Front Sight Alaska during the months of July and August each year! Minutes from the Kenai River—one of the greatest king salmon rivers in the world— Front Sight Alaska gives you our world-class firearms training with the best fishing and hunting in North America. This Alaska Supplement cannot be bought at any price. We offered it several years ago and you would have paid \$5,000 back then to have it attached to an All-Inclusive Diamond Membership. Now it would cost twice that amount IF I ever offered it again, which I will not. However, YOU can have it as a free bonus—but you must enroll before the First 400 Respond which will be well before the deadline of midnight, April 30, 2007!

Bonus #4: A Four-Day, Front Sight Birthday Party where you can bring up to 40 Guests Free of Charge (as long as half of the guests have never been to Front Sight before) for a handgun, shotgun, or rifle course! If a full group of 40, you will hold your Birthday Party Course on your own private range! With Four-Day Course Prices now at \$2,000 this Bonus allows you to throw an \$80,000 Birthday Party for 40 of your Guests!—but you must enroll before the First 300 Respond which will be well before the deadline of midnight, April 30, 2007!

Bonus #5: Enroll immediately as an All-Inclusive Diamond Elite Lifetime Member and I will give you a VIP Practice Manual Coupon to present to the Pro Shop on your next visit to Front Sight good for the Entire \$280 Set of Front Sight Practice Manuals: Defensive Handgun, Tactical Shotgun, Practical Rifle, USG Submachine Gun, Select-Fire M16, Empty Hand Defense, and Edged Weapons! 775 pages with photos of all the techniques taught in our flagship courses FREE OF CHARGE in easy to follow, step-by-step format as your "Perfect Practice" At Home Front Sight Instructor—but you must enroll before the First 200 Respond which will be well before the deadline of midnight, April 30, 2007!

**Was I Right? Utterly Amazing, Unbelievable Bonuses?
Are You Patting Yourself on the Back for Being One the Loyal 97%?
You Should. You Deserve It... So Here's 2 More Amazing Bonuses...**

Two More Amazing Bonuses These Will Require You To Respond Immediately— And I Mean Immediately—Like Right After You Are Done Reading This Letter! Why? Because The Last Two Bonuses Are So Limited In Number That I'm Afraid If You Don't Call As Soon As You Are Done Reading This Letter, They Will Be Gone... (6,000 members are reading this letter right now)

Bonus #6: 100 Guns from Front Sight's Armory have been randomly numbered 1-100. The first 100 to enroll as an All-Inclusive, Diamond Elite Member will receive a VIP GUN GIVEAWAY COUPON with a number assigned 1 to 100 in order of enrollment. Upon your next visit to Front Sight, present your VIP GUN GIVEAWAY COUPON to Wes or Arma in the Pro Shop and they will pull the gun that matches the number on your coupon and that gun is yours! (All FFL Rules apply so we must transfer it to you through your FFL Dealer) The 100 guns range from pocket pistols to Glock's, Shotguns - to Rifles-- even a \$3,000 Precision Rifle used by Mark Wahlberg in training him for the movie "Shooter" which is sure to bring a smile your red-blooded American face! This Bonus Must Be Limited To The First 100 Who Enroll Because We Are Only Going To Set Aside 100 Guns! Call us TODAY. As you are reading this, your fellow First Family members are already enrolling. I'm not exaggerating... In the past, with offers not even close to as big and great as "Exchange in Abundance" as this one, the phone starts ringing and the fax machine starts cranking the VERY NEXT DAY after we drop the letter in the mail. If you live outside of California, you are already a day or two behind in your response so call us TODAY to secure ALL 7 Amazing Bonuses!

Bonus #7: I have commissioned a special, one-time only crafting of 50 Diamond Elite custom, hand-made neck knives by world renowned, 17th Generation Master Bladesmith, Murray Carter. These custom, hand-made neck knives are as beautiful as they are functional! The 3.5 inch blades are sharp as a razor, works of art that you will proudly wear around your neck— in a special custom sheath under or over your street clothes— for daily utilitarian and self defense use. Your custom Diamond Elite Neck Knife will feature a very distinctive marking in the handle signifying your Elite Status among all Front Sight students and members! Let me tell you, my staff have repeatedly begged me to offer such a custom knife in the Front Sight Pro Shop to sell for thousands of dollars and I have said "No!" I have been hoarding the opportunity to secure a Front Sight Commissioned Custom Knife and now I want to reward the First 50 Members who step up and say "Yes!" to my Diamond Elite Membership— my greatest "Exchange in Abundance" ever offered! I only have 50 of these one time only Diamond Elite custom neck knives and there won't be any more! CALL ME TODAY so when your friends and shooting buddies ask, "Where can I get a knife like that?" you can tell them, "You can't... This was a personal gift from Dr. Piazza to me when I became a Diamond Elite Member!" CALL ME RIGHT NOW at 1.800.987.7719 to grab your own 1 of 50, Custom, Hand-Made, Diamond Elite Neck Knives!

Have You Picked up the Phone to Call Me? What Are You Waiting For?

You Want to Know the Price You'll Have to Pay to Receive the Greatest "Exchange in Abundance Thank You" in Front Sight's History? OK, but if I were you, I would pull out my credit card, pick up the phone and call 1.800.987.7719. As soon as you answer the phone, say "I'll Take it! Sign Me Up as a Diamond Elite Member!" Then ask him what bonuses are still left and how much the membership costs! I'm serious... That's exactly what I would do if I were you. Hey, when I was a firearms training student, I NEVER got an opportunity like this...

Let's Summarize and Confirm Everything I'm Giving You in the Greatest "Exchange in Abundance Thank You" in Front Sight's History...

Here's Everything You are Going to Receive By Calling Immediately To Secure My Greatest "Exchange in Abundance" Ever...

- **All-Inclusive Diamond Elite Lifetime Membership:** If you just attend the 50 plus courses we offer only ONE TIME, the value of a Diamond Elite Lifetime membership exceed \$60,000! Attending courses multiple times plus the annual "Secrets of the Ultra Successful" Seminar places the lifetime value of the All-Inclusive, Lifetime Diamond Elite Membership at well over \$100,000!
- **Diamond Elite First Family Card, Hat and Pin...** All identifying you to everyone you meet as one of the Loyal 97%, one of the First Family Elite—a member who stood your ground with us and did the right thing for the betterment of the Front Sight organization!
- **Special "Pre-Public-Pricing" of All Residential Offerings in Front Sight's NEW Master Planned Community...** Before any residential units in the Front Sight Master Planned Community are offered to the public, you get to select yours before the public gets to see anything! That means you get the best and save the most! This benefit alone could mean tens of thousands of dollars to you!
- **Apply Every Dollar You Have Paid Into Your Membership Toward a Residence in Front Sight's NEW Master Planned Community...** You get to apply every dollar you have paid for your training membership directly to the price of the residence you chose! This DOUBLES the value of whatever you have paid for your training membership to date! Unbelievable but true... Just for you!
- **Free One Level Upgrade Bonus:** After enrolling as a Diamond Elite Member, your old membership will be upgraded to the next higher level of four membership levels. Value depending on your current membership level is \$4,000 to 50,000!
- **"To Be Determined" Status:** After enrolling as a Diamond Elite Member your old membership will be upgraded and changed to TBD "To Be Determined" status allowing you to sell, transfer, or gift it to anyone you wish without a transfer fee. Value of TBD with no transfer fees is up to \$25,000!
- **Front Sight Alaska Supplement:** If you could purchase it — which you can't — adding Front Sight Alaska to your Diamond Elite Membership would cost you \$10,000, but if you are one of the First 400 to Respond Front Sight Alaska is yours free for the best hunting and fishing in North America!
- **Four-Day, Front Sight Birthday Party:** You can bring up to 40 people (half must be new to Front Sight) for a Four-Day Defensive Handgun, Tactical Shotgun, or Practical Rifle Course free of charge to celebrate your birthday! Value of 40 of your family and friends attending a course on us at the 2007 prices of \$2,000 per course is \$80,000. Value of the Front Sight Range Masters singing Happy Birthday to you on the first morning in the classroom? Priceless! Limited to First 300 Who Respond!
- **VIP Practice Manual Coupon:** Present your VIP Coupon to the Pro Shop on your next visit and receive \$280 in 7 Different Practice Manuals, totaling 783 pages with photos, for your At Home "Perfect Practice" Front Sight Instructor! Limited to First 200 Who Respond!
- **VIP Gun Giveaway Coupon:** Be among the First 100 Who Enroll in an All-Inclusive Diamond Elite Lifetime Membership and receive a numbered, Gun Giveaway Coupon to match with one of 100 Guns in Front Sight's Armory and That Gun is yours! Guns range from pocket pistols to Glock's, Shotgun to Rifles, and even a \$3,000 Precision Rifle used to train Mark Wahlberg for "Shooter!"
- **One of 50 Custom, Diamond Elite Neck Knives Hand-Made By 17th Generation Japanese Master Bladesmith, Murray Carter :** You can't get these at any price! I've commissioned them for the FIRST 50 who call and say, "Yes. Sign me up!" Call Now to Secure ALL 7 Bonuses!
- **The value of having Skill at Arms:** Training that leaves you with a comfort of knowing you can handle any violent attack or lethal encounter so you fear nothing... Priceless!
- **The value of having your spouse and family Front Sight Trained:** Better than Priceless!

Value? Exceeds \$100,000! Approaches \$250,000! So What's it Cost?

**All-Inclusive, Diamond *Elite* Lifetime Membership
Plus 7 Unbelievably Valuable Bonuses
In Three Easy Payment Options**

- 90 monthly credit card payments of \$99 for a total cost of \$8,900. OR
- 36 monthly credit card payments of \$199 for a total cost of \$7,164 (You Save \$1,736) OR
- Single payment of \$4,900 (You Save \$4,000!)

I know, you can't believe it! You were thinking ten times that amount! Well I've been telling you it was the greatest "Exchange in Abundance Thank You" EVER and now you can see I was telling the truth! And just like I said you would, you are asking yourself "How can Naish do this?"

(I wish you would stop talking to yourself, pick up the phone and call 1.800.987.7719 before all the bonuses are gone. I mean it— you are running out of time to get your Limited Edition Diamond *Elite* Neck Knife and Front Sight Armory Gun Giveaway plus the other Amazing Bonuses...)

Here's MORE Proof of WHY and HOW I can offer you such an unbelievable "Exchange in Abundance Thank You" and this proof comes directly from One of the Loyal 97%... Read what he has to say and then call to become a Diamond *Elite* Member TODAY...

Dear Dr. Piazza,

I was able to bring about 30 people for the Four Day Defensive Handgun class on March 2nd and most of them had never had any formal firearms training. I was able to watch them go from "not knowing what they did not know" to graduating and knowing the importance of firearms training. It was a great experience for all of us.

The best part of the class for me was at the end of the fourth day when we were doing the final hostage rescue drills. I began to think how neat it was that all of these people who are my friends and guests now have the skills to protect themselves and their family if the need ever arises. It felt great for me to know that I was able to give them the opportunity to learn such invaluable skills.

The more time I spend at Front Sight the more I am learning that it is much more than a business. It really is all about preserving our Second Amendment rights by reaching and educating everyone in proper and safe firearm training. So I just want again to say "thanks for the party." Even though you provided the courses at no charge as part of my Diamond Membership we were all treated like VIPs for the whole weekend. It could not have been any better. It was one awesome Birthday party!

Jason Shaw, Banker, Aurora, Utah

HOW Can I Do This? It's real simple. Front Sight is not about money. Front Sight is about PURPOSE. Our purpose is to positively change the image of gun ownership in our lifetime. When I make it easy for you to step up to our highest level membership and allow you to go out and find another person to take over your old membership, we immediately double our influence across the country. I know that the people you bring to us will also bring people to us. We keep growing with the RIGHT people— Patriots like us who cherish the freedom the Second Amendment affords and the comfort that Skill at Arms provides. **So Choose Which Payment Plan You Want And Call My Assistant Jon Right Now at 1.800.987.7719 to Enroll Over the Phone...**

Sincerely,



PS: If you are reading this after hours, complete the *Rapid Response Enrollment Form* on the next page and fax it to 831.684.2137 for immediate acceptance in order received.

**Rapid Response Greatest "Exchange in Abundance" Enrollment Form
All-Inclusive Diamond Elite Lifetime Membership plus 7 Amazing Bonuses**

- Yes Naish! You weren't kidding when you said this was going to be the Greatest "Exchange in Abundance Thank You" in Front Sight's History... Sign Me Up! I understand by enrolling immediately in an All-Inclusive, Diamond Elite Lifetime Membership I receive the following:

- **ATTEND ANY COURSE HELD AT FRONT SIGHT FREE OF CHARGE AND AS MANY TIMES AS YOU WISH FOR THE REST OF YOUR LIFE.**
- Attend Annual, Two-Day Secrets of the Ultra Successful Event Free of Charge
- Guaranteed Placement in any course with two weeks advance enrollment.
- 40% Savings On Any Products Purchased from Pro Shop, Gunsmith, and Armory.
- Free Use of Front Sight's Private First Family Ranges.
- Free Locker Rental in Front Sight's Armory.
- Invitation to annual July 4th Lifetime Members' Reunion Celebration.
- Name etched in First Family Monument.
- Password to access exclusive and restricted First Family areas of web site and e-mail forum.
- Diamond Elite First Family Card, Hat, and Pin.
- Special "Pre-Public-Pricing" of Residential Offerings in Front Sight's New Master Planned Community.
- **Apply Every Dollar You Have Paid Into Your Membership Toward a Residence in Front Sight's New Master Planned Community.**

Plus the Following 7 Amazing Bonuses Valued at over \$100,000:

1. Free upgrade of my old membership one full level to the next higher of four membership levels.
2. Old membership converted to "To Be Determined" so I can sell, transfer or gift to anyone I wish without a transfer fee. (only restriction is I cannot advertise membership in any public media)
3. Front Sight Alaska supplement added to my Diamond Elite Lifetime Membership. (First 400 to Respond)
4. Four-Day Front Sight Birthday Party for 40 People (half must be first time students). (First 300 to Respond)
5. VIP Practice Manual Coupon redeem at Pro Shop for all 7 Front Sight Practice Manuals. (First 200 to Respond)
6. VIP Front Sight Armory Gun Giveaway Coupon. (First 100 to Respond Only)
7. 1 of 50 Diamond Elite Neck Knives hand made by Master Bladesmith M. Carter. (First 50 to Respond Only)

Choose ONE Payment Plan:

- 90 monthly credit card payments of \$99 for a total cost of \$8,900.
- 36 monthly credit card payments of \$199 for a total cost of \$7,164 (You Save \$1,736)
- Single payment of \$4,900 (You Save \$4,000)

Name: _____ Old Membership # _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone: _____ Work: _____

Credit Card Number: _____ Expires: _____

(VISA, MasterCard, Discover, American Express or a combination of cards for the single payment)

Signature: _____ Date: _____

WARNING* Bonuses Will Be Gone Web Before April 30 Deadline ***WARNING**
To Grab All Bonuses Fax Immediately to 831.684.2137 or Call 1.800.987.7719 to Enroll Over Phone
BEFORE Midnight, Monday April 30, 2007 DEADLINE.
 If paying by check, mail TODAY to PO Box 2619, Aptos CA 95001

EXHIBIT C

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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Stacy James, et al.,

NO. C 05-04532 JW

Plaintiffs,

ORDER APPOINTING RECEIVER

v.

Ignatius A. Piazza, et al.,

Defendants.

On October 15, 2007, a First Amended Final Judgment and Order of Dismissal With Prejudice was entered in this action. Under the terms of that Judgment, Defendants were ordered to perform enumerated acts in settlement of a class action and the class was given an interest in the property of Defendant Front Sight Management, Incorporated, also doing business as Front Sight Firearms Training Institute (hereafter referred to as, "Front Sight"). The Court retained jurisdiction over the real property and related rights of Front Sight.

At a hearing of this matter on May 11, 2009, the Court determined that equitable intervention by the Court is necessary to protect the interest of the judgment creditor class in the property of Front Sight. The Court determined that Individual Defendant Ignatius A. Piazza and Defendant Front Sight were failing to comply with the Judgment and post-judgment Orders of the Court. Good cause exists that Front Sight is deliberately failing to comply with the Judgment and will continue to do so. Therefore, in light of these circumstances, pursuant to Federal Rule of Civil Procedure 66, *sua sponte*, the Court appoints George C. Fisher as Interim-Receiver of Front Sight Management, Inc. Pending the appointment of a Receiver, the Interim-Receiver is empowered to take immediate

1 possession, custody and control of any and all business operations, assets, and financial matters of
2 Judgment Debtor Front Sight Management, Incorporated, separately and doing business as Front
3 Sight Firearms Training Institute, whether in the possession of Front Sight Management,
4 Incorporated, or its agents, officers, directors or employees or any other person or entity. This
5 appointment is effective upon the filing of (1) the Oath of Receiver and (2) Receiver's Bond in the
6 penal sum of \$2,500.

7 During the period of receivership, IT IS ORDERED THAT THE RECEIVER SHALL BE
8 AUTHORIZED TO:

- 9 a. Operate the business of Front Sight Management, Incorporated in the executive
10 capacity of Chief Executive Officer and to continue the business operation in its
11 historical ordinary and usual course, including the collection and distribution of
12 accounts and inventory proceeds, and to review and oversee Front Sight
13 Management, Incorporated, doing Front Sight Management, Inc.' accounting and
14 financial reporting. The Receiver shall also have all the powers, duties and authority
15 as are provided by law, and shall operate, manage, control, conduct, care for,
16 preserve, and maintain all of the assets of Front Sight Management, Incorporated,
17 (the "Assets"). The Receiver shall maintain all or some of the existing staff,
18 completing the processing, preparing, reconditioning, or sale of said Assets, and other
19 assets as it is appropriate for the orderly management, control and operation of Front
20 Sight Management, Incorporated, and incur the expenses necessary to preserve,
21 protect and carry out the foregoing;
- 22 b. Exclude as deemed necessary any Front Sight Management, Incorporated, personnel
23 or officers from the business premises and the premises of business operation;
- 24 c. Enter, gain access and take possession of Front Sight Management, Inc.' business
25 premises. In this regard, the Receiver shall be authorized to change the locks on all
26 doors providing access to the Business Premises and to do all things which he deems
27 necessary to protect the Assets;

28

United States District Court
For the Northern District of California

- 1 d. The Receiver shall further be authorized to take possession and collect the accounts,
2 chattels, paper and general intangibles of every kind arising out of Front Sight
3 Management, Inc.' operations and the sale, resale, transfer or distribution of the
4 Assets and take possession of all the books and records relating to the foregoing,
5 wherever located, as the Receiver deems necessary for the proper administration of
6 the Receivership Estate, but the books and records shall be made available to Front
7 Sight Management, Inc. as is reasonably necessary;
- 8 e. Review and approve or deny the incursion of corporate expenses;
- 9 f. Review and approve or deny any and all corporate disbursements;
- 10 g. Sequester or otherwise set aside and segregate funds in sufficient quantity to satisfy
11 Plaintiffs' outstanding Judgment plus all accrued interest, plus such sums as required
12 to compensate Receiver. Subject to further application by the Receiver, the Receiver
13 shall charge no more than \$300 per hour for his services and shall be paid out of the
14 Assets subject to this receivership, unless otherwise ordered by the Court;
- 15 h. Provide weekly reports to the Court, with copies to counsel, of business financial
16 operations, reflecting the Receiver's fees and administrative costs and expenses
17 incurred for said period in the operation and administration of the Receivership
18 Estate;
- 19 i. The Receiver is authorized and empowered with the right to execute and prepare all
20 documents and to perform all acts, either in the name of Front Sight Management,
21 Incorporated, also doing business as, Front Sight Firearms Training Institute., as it is
22 applicable, or in the Receiver's own name, which are necessary or incidental to
23 preserving, protecting, managing, controlling or liquidating the property of the
24 Receivership Estate;
- 25 j. The Receiver is authorized to and empowered with the right to demand, collect and
26 receive all monies, funds and payments arising from the Assets;
- 27
- 28

United States District Court
For the Northern District of California

- 1 k. The Receiver may in his sole discretion contact each of the accounts receivable
2 debtors of Front Sight Management, Inc. ("Accounts Receivable Debtors") in order to
3 advise them to send any and all payments directly to the Receiver;
- 4 l. The Receiver may take any and all steps necessary to receive, collect and review all
5 mail addressed to Front Sight Management, Inc. The Receiver is also authorized to
6 instruct the U.S. Postmaster to reroute, hold, and or release said mail to said Receiver.
7 Mail reviewed by the Receiver in the performance of his duties will promptly be
8 made available for inspection to Front Sight Management, Inc. after review by the
9 Receiver;
- 10 m. The Receiver shall take possession of all bank accounts of Front Sight Management,
11 Inc. and all accounts and chattel paper wherever located, and shall receive possession
12 of any money on deposit in said bank accounts;
- 13 n. The Receiver is authorized to employ agents, employees, appraisers, guards, clerks,
14 accountants, attorneys, and management consultants to administer the Receivership
15 Estate and to protect the Assets as he shall deem it necessary. No risk or obligation
16 incurred by said Receiver shall be at personal risk or obligation of the Receiver, but
17 shall be the risk or obligation of the Receivership Estate;
- 18 o. If there is insufficient insurance coverage on the Assets, it is hereby ordered that the
19 Receiver shall have thirty (30) working days to procure said insurance on the Assets,
20 and during said period, the Receiver shall not be personally liable for claims arising
21 or for the procurement of insurance;
- 22 p. The Receiver is empowered to establish bank accounts at any bank for the deposit of
23 monies and funds collected and received in connection with his administration of the
24 Receivership Estate, provided that all funds on deposit are insured by an agency of
25 the United States government;
- 26 q. The Receiver is authorized to institute ancillary proceedings in this State or other
27 States as is necessary to obtain possession and control of any property or asset of
28

United States District Court
For the Northern District of California

1 Front Sight Management, Inc., and the Receiver may engage the services of counsel
2 if necessary. The Receiver may pay for such services from the funds of the
3 Receivership Estate; and

4 r. The terms and conditions of receivership shall be subject to further court order,
5 amendment or modification, upon the Court's own initiative or at the
6 recommendation of the Receiver, and shall terminate only upon further order of the
7 Court.

8 s. The fees of the receiver shall be paid out of the Assets.

9 IT IS FURTHER ORDERED THAT DEFENDANTS, each of them, and their respective officers,
10 directors, shareholders, general partners, limited partners, members, agents, property managers,
11 employees, assignees, successors, representatives, and all persons acting under, in concert with, or
12 for them, and all other persons with actual or constructive knowledge of this Order, and each of
13 them shall do as follows:

14 a. Turnover to the Receiver the possession and management of the Assets and other
15 items of the Receivership Estate;

16 b. Turnover to the Receiver all keys, leases, books, records, books of account, ledgers,
17 operating statements, budgets, real estate tax bills, and all other business records
18 relating to the Assets or Business Premises of Front Sight Management, Inc.,
19 wherever located, and in whatever mode maintained;

20 c. Turnover to the Receiver all documents pertaining to licenses, permits and Taxpayer
21 ID Numbers, as well as government approvals relating to the Assets, and shall
22 immediately advise the Receiver of their Federal Taxpayer Identification Number
23 used in connection with the operation of Front Sight Management, Inc.;

24 d. Shall immediately advise the Receiver as to the nature and extent of insurance
25 coverage for Front Sight Management, Inc. or its operations and shall immediately
26 name the Receiver as an additional insured on the insurance policies for the period
27 that the Receiver shall be in possession of Front Sight Management, Inc.. Defendants
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United States District Court
For the Northern District of California

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- are prohibited from canceling, reducing or modifying any and all insurance coverage currently in existence with respect to Front Sight Management, Inc. and its operations;
- e. Shall turnover to the Receiver all leases, licenses, or other agreements of any kind whatsoever;
 - f. Shall turnover to the Receiver all monies or funds of any type in the account or accounts of Front Sight Management, Inc.;
 - g. Shall not commit or permit waste on the Business Premises, or commit or permit any act on the Business Premises in violation of law, or remove, transfer, encumber or otherwise dispose of any of the Business Premises or the fixtures thereon, or the Assets or any part thereof;
 - h. Shall not directly or indirectly interfere in any manner with the discharge of the Receiver's duties or his possession of and operation or management of Front Sight Management, Inc.;
 - i. Shall not demand, collect, receive, discount, or in any other way divert or use any of Front Sight Management, Inc.' accounts payable or other Assets;
 - j. Shall not interfere with the Receiver's collection of accounts receivable;
 - k. Shall not dispute, remove or secrete the inventory of Front Sight Management, Inc.;
 - l. Shall not expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal, or in any manner whatsoever deal in or dispose of the whole or any part of the Assets; and
 - m. Shall not do any act which will or which will tend to impair, defeat, prevent or prejudice the preservation of the Assets.

IT IS FURTHER ORDERED THAT, the following shall apply:

- a. On June 15, 2009, a hearing will be held with respect to this matter. On or before June 5, 2009, the Interim-Receiver shall file and serve a report addressing any of the matters pertaining to his appointment, including whether he would assume the

United States District Court
For the Northern District of California

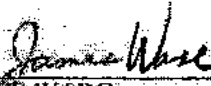
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appointment as the Receiver. In addition, the Receiver shall investigate and report whether any new entities should be brought in to this case and added to the Judgment as the result of any transfer of properties and assets of Front Sight between the date of the Judgment and the date of the hearing

- b. In no event shall the Receiver be responsible for paying any expenses of Defendants or other payables owed to third parties which payables were due and owing prior to the appointment of the Receiver; and
- c. The parties hereto or the Receiver may at any time apply to this Court for further or other instructions and for further powers necessary to enable the Receiver to perform his duties properly.

IT IS SO ORDERED.

Dated: May 11, 2009



JAMES WARE
United States District Judge

1 THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

- 2 Christopher Clyde Walton chris.walton@greerlaw.biz
- 3 Curtis Keith Greer greerkeith@aol.com
- 4 Dana E Morris dmorris@nv-legal.com
- 5 Jon Mark Thacker jthacker@ropers.com
- 6 Richard Martin Williams rwilliams@ropers.com
- 7 Steven John Roberts steve.roberts@greerlaw.biz
- 8 George Fisher, georgecfisher@gmail.com

9 Dated: May 11, 2009

Richard W. Wicking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

United States District Court
For the Northern District of California

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EXHIBIT D



Enemy Update #1

ENEMY UPDATE #3

WORLD CLASS SHOTGUN
 PERSONNEL
 IN THE NEWS
 FREQUENTLY ASKED
 QUESTIONS
 AND COURSE SCHEDULE
 CONTACT INFORMATION

Subscribe to Front Sight Training Report.

Name:

Company:

Address:

City:

State:

Zip:

Phone:

Country:

After you have made your payment, please email us at frontsight@frontsight.com with your name, address, and phone number so we can provide you with the necessary information.

Front Sight, Inc. is an Equal Opportunity Employer. We do not discriminate on the basis of race, gender, or ethnicity.

Link to Our Website
 Front Sight Firearms Training Institute
 10000 N. 10th Street, Suite 100
 Phoenix, AZ 85020
 Phone: 602-998-8888
 Email: frontsight@frontsight.com

ENEMY UPDATE #3

PLUS A NEW THANK YOU REWARD FOR STANDING SHOULDER-TO-SHOULDER WITH ME IN THIS FIGHT..

Dear Loyal and Supportive Front Sight Member,

As you should know from visiting www.FrontSight.com, ENEMY we filed a lawsuit against a Lying, Two Faced, Gun Grabbing, Hillary Clinton Supporting Con Man who attempted to steal Front Sight by filing a bogus foreclosure action against us. In our lawsuit we asked the Court to appoint a Receiver to take over his business, order him to provide a full accounting of where he spent the hundreds of thousands of dollars we gave him to secure full funding for our resort project and recover the tens of millions of dollars in damages his lies and delays have caused us.

In ENEMY UPDATE #1, I shared with you that in our first court hearing the judge slapped him HARD by placing a restraining order against his actions and ordered him to immediately expunge (remove) his Notice of Default and Intent to Sell from our property title. The judge also ordered him to produce a full accounting of where he spent the hundreds of thousands of dollars he was supposed to use to market our project to deliver the full funding he promised multiple times.

In Enemy Update #2, I shared with you that the Lying, Two Faced, Gun Grabbing, Hillary Clinton Supporting Con Man evidently did not understand that when the Court makes rulings so heavily in our favor, AT THE FIRST HEARING, the Judge is sending a message that we will ultimately prevail in our lawsuit. I say the Con Man must not have understood the strong message the Judge was sending him because, believe it or not, he filed a Motion to Dismiss.

It did not take long for the Judge to deny Con Man's Motion to Dismiss and encouraged us to amend (strengthen) our complaint, now that we received preliminary accounting that shows the Con Man could not account for about \$200,000 of the hundreds of thousands of dollars we gave him to secure full funding for our project. We also found several other entities (companies) that he has connections to that he distributed tens of thousands of dollars of our money to, instead of using it for the intended purposes of securing full funding for our project.

In today's update, Enemy Update #3 I want to let you know that we hired a forensic accountant to review the preliminary accounting the Lying Con Man provided us. The forensic accountant's review of the documents reveals that less than 1/3 of the money we paid was ever used for the purposes of marketing and fully funding the Front Sight project as he fraudulently represented multiple times that he would.

Further investigations reveal he commingled the funds we paid him with multiple entities, payments and distribution of the funds we paid him were covertly distributed to entities unrelated to our project and diversion of the funds we paid him were used to support his lifestyle, with money spent on everything you can imagine, even payments for Starbucks coffees and car washes! And this is just the first review of the limited number of financial documents he supplied us.

We will now be filing with the Court, a Motion to Compel the Lying Con Man to provide the full accounting the Judge had ordered him to provide and also a full accounting of all the other entities he commingled or distributed funds to that were supposed to be used in marketing and fully funding the Front Sight project as he fraudulently represented.

THE LEGAL NOOSE CONTINUES TO TIGHTENING AROUND THE CON MAN'S NECK! Further discovery through deposing everyone connected to the Con Man, including the people running

the companies he funneled money to, will expose more of his misconduct and add to the evidence stacking up against him.

Although we have already won MAJOR victories in this case, there is still much to do to fully prosecute this case through completing numerous depositions, bringing in experts (such as the forensic accountant we hired) to review the evidence so they can testify to support our case and deliver fast, furious, and well-deserved legal justice to the man who tried to steal Front Sight for his own greed and to cover his tracks of misconduct.

WE HAVE OPENED A CAN OF WHOOPASS and the Lying, Two Faced, Con Man IS FEELING IT NOW!

I WOULD LIKE YOU, to become one of MY FRONT SIGHT WARRIORS and stand with me in this fight!

WHY?

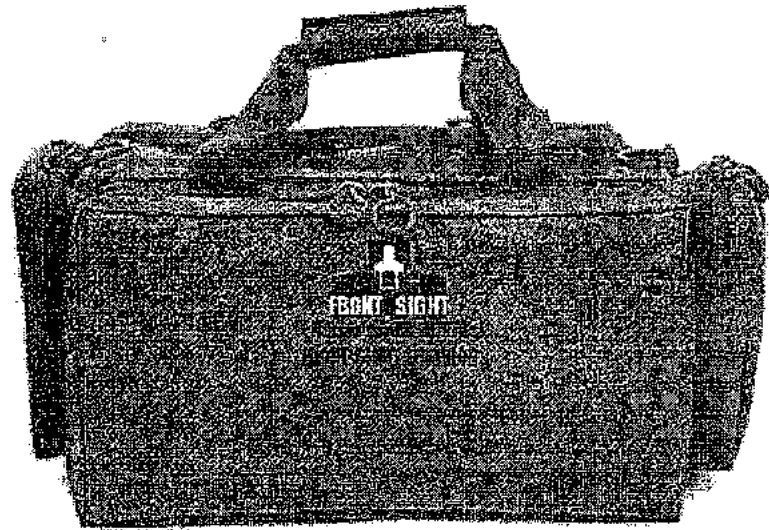
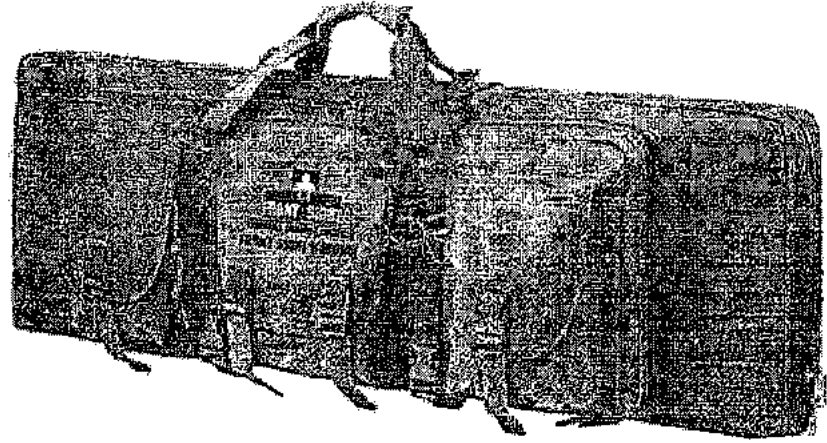
Because with your participation, we can continue to RAPIDLY advance the construction of Front Sight Resort while we deliver fast, furious, and well-deserved legal justice to the man who tried to steal Front Sight for his own greed, and to cover his tracks of misconduct.

Thousands of your fellow Front Sight members have become Front Sight Warriors and are standing shoulder-to-shoulder with me. I would like you to join us and I am going to reward you to do so!

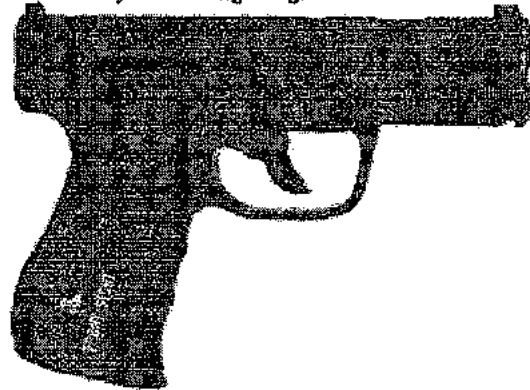
HERE ARE YOUR REWARDS...

- Become a Front Sight Warrior at the \$50 level and I will give you \$1,000 in Front Sight Credits, 10 Four Day Course Certificates, and 10 Patriot Lifetime Memberships
- Become a Front Sight Warrior at the \$100 level and I will give you \$2,000 in Front Sight Credits, 20 Four Day Course Certificates, and 20 Patriot Lifetime Memberships.
- Become a Front Sight Warrior at the \$200 level and I will give you \$4,000 in Front Sight Credits, 40 Four Day Course Certificates, 40 Patriot Lifetime Memberships, PLUS YOUR CHOICE of this custom, logo'd, limited edition, LARGE Front Sight Warrior Handgun Range Bag or Double Rifle Range Bag that you cannot buy at any price. You can only secure it by taking advantage of this special opportunity to stand shoulder to shoulder with me and your fellow Front Sight Warriors to provide legal justice to those who would attempt to harm us and to rapidly complete the Front Sight Resort.





- Become a Front Sight Warrior at the \$500 level and I will give you \$10,000 in Front Sight Credits, 100 Four Day Course Certificates, 100 Patriot Lifetime Memberships, PLUS YOUR CHOICE of the custom, logo'd, limited edition, LARGE Front Sight Warrior Handgun Range Bag or Double Rifle Range Bag that you cannot buy at any price. PLUS I will give you Front Sight FMK 9mm Pistol to carry in the Range Bag!



- Become a Front Sight Warrior at the \$1,000 level and I will give you \$20,000 in Front Sight Credits, 200 Four Day Course Certificates, 200 Patriot Lifetime Memberships, PLUS YOUR CHOICE of the custom, logo'd, limited edition, LARGE Front Sight Warrior Handgun Range

Bag or Double Rifle Range Bag that you cannot buy at any price. PLUS I will give you TWO Front Sight FMK 9mm Pistols to carry in the Range Bag!

- **Become a Front Sight Warrior at the \$5,000 level and I will give you \$100,000 in Front Sight Credits, 1,000 Four Day Course Certificates, 1,000 Patriot Lifetime Memberships, PLUS YOUR CHOICE of the custom, logo'd, limited edition, LARGE Front Sight Warrior Handgun Range Bag or Double Rifle Range Bag that you cannot buy at any price. PLUS I will give you TWO Front Sight FMK 9mm Pistols to carry in the Range Bag, PLUS I will give you a Front Sight SP1 Piazza Pistol in your choice of 9mm or .40SW!**

Front Sight SP1 Piazza pistol in your choice of 9mm or .40SW



What are you going to do with all the Credits, Course Certificates and Memberships?

Use the Credits now for your annual criminal background checks, memberships transfers, pro shop purchases and special offers we provide in the future, like so many members benefited from when we offered the Vacation Club Villas.

Use the Certificates and Memberships to gift or sell to friends and family members.

And as I have written several times in the my e-mail correspondence with you, that once the resort is completed, financially self-sufficient, self-sustaining, and running like the well-oiled machine you are accustomed to experiencing wherever you attend a course at Front Sight, I will gently and generously turn the operation of Front Sight over to you, my loyal and supportive members, so you and your families can own and operate Front Sight for generations to come.

When it is time to turn over Front Sight Firearms Training Institute to you, I will allow you to trade in your surplus credits, memberships, and certificates for your percentage of ownership.

This means that the more credits, memberships and certificates YOU have to trade in, the greater percentage of ownership you will secure relative to the other members.

For this reason, you should build up your account AS MUCH AS YOU CAN. In other words, you cannot have too many credits, memberships and certificates to trade in. Quite the opposite. The more credits, memberships and certificates YOU have, the more percentage of ownership you will be able to secure relative to the other members.

HOW DO YOU GET YOUR GUN(S)?

After your order is processed, we will mail you the documentation of your purchase including the certificate for the gun(s) that you will then mail to our Program Guns department along with a \$50 check for the shipping of each gun, and the Federal Firearms License information of the Licensed Gun Dealer you wish us to ship your guns to. We will then place the order directly with the factory or distributor and once received we will deliver the guns to the Licensed Gun Dealer you selected for transfer to you. Very simple and straightforward.

Here's Construction Progress Video #6. Watch it and then submit your Front Sight Warrior Level of Participation and get rewarded for standing shoulder to shoulder with me and your fellow Front Sight Warriors to provide legal justice to those who would attempt to harm us and to rapidly complete the Front Sight Resort!

09:00 |

Become a Front Sight Warrior TODAY!

Secure, Online FRONT SIGHT WARRIOR Rapid Enrollment Form

**Thank you again for being someone I can count on. And
thank you for your continued, loyal participation in Front
Sight's phenomenal success!**

Yes, Dr. Piazza, I want you to destroy the lying, two-faced, gun-grabbing Hillary Clinton supporting, con man Robert Dziubla by rapidly and aggressively prosecuting our lawsuit against him to overwhelming victory. I also want to help continue the rapid completion of the Front Sight Resort construction project.

I understand I can use the Front Sight Credits for purchases in the pro shop, membership transfer fees, criminal background checks and special offers Front Sight provides in the future. I understand I can gift, sell or transfer the certificates to anyone and the memberships to any non member. I further understand that when Front Sight Resort is completed, financially self-sufficient, self-sustaining, and running like the well-oiled machine I am accustomed to experiencing whenever I attend a course at Front Sight, I will be allowed to trade my surplus Credits, Certificates and Memberships back into Front Sight for a percentage of ownership in Front Sight. I further understand that the more Credits, Memberships and Certificates I have to trade back in relative to the other members, the greater the percentage of ownership in Front Sight I will secure.

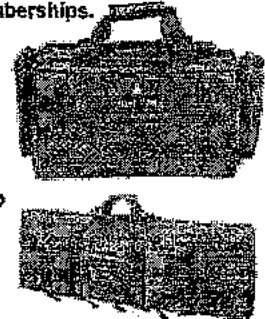
Front Sight Litigation War Chest Participation

Become a Front Sight Warrior at the \$50 level and I will give you \$1,000 in Front Sight Credits, 10 Four Day Course Certificates, and 10 Patriot Lifetime Memberships

Become a Front Sight Warrior at the \$100 level and I will give you \$2,000 in Front Sight Credits, 20 Four Day Course Certificates, and 20 Patriot Lifetime Memberships.

Become a Front Sight Warrior at the \$200 level and I will give you \$4,000 in Front Sight Credits, 40 Four Day Course Certificates, 40 Patriot Lifetime Memberships, PLUS this custom, logo'd, limited edition, LARGE Front Sight Warrior Handgun Range Bag or Double Rifle Range Bag that you cannot buy at any price. You can only secure it by taking advantage of this special opportunity to stand shoulder to shoulder with me, and your fellow Front Sight Warriors to provide legal justice to those who would attempt to harm us and to rapidly complete the Front Sight Resort.

Become a Front Sight Warrior at the \$500 level and I will give you \$10,000 in Front Sight Credits, 100 Four Day Course Certificates, 100 Patriot Lifetime Memberships, PLUS this custom, logo'd, limited

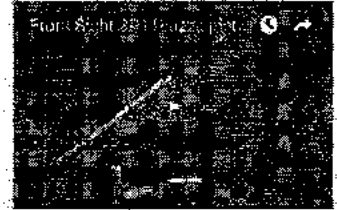


edition, **LARGE Front Sight Warrior Handgun Range Bag or Double Rifle Range Bag** that you cannot buy at any price. **PLUS** I will give you **Front Sight FMK 9mm Pistol** to carry in the Range Bag!



Become a **Front Sight Warrior** at the **\$1,000** level and I will give you **\$20,000** in **Front Sight Credits**, **200 Four Day Course Certificates**, **200 Patriot Lifetime Memberships**. **PLUS** this custom, logo'd, limited edition, **LARGE Front Sight Warrior Handgun Range Bag or Double Rifle Range Bag** that you cannot buy at any price. **PLUS** I will give you **TWO Front Sight FMK 9mm Pistols** to carry in the Range Bag!

Become a **Front Sight Warrior** at the **\$5,000** level and I will give you **\$100,000** in **Front Sight Credits**, **1,000 Four Day Course Certificates**, **1,000 Patriot Lifetime Memberships**. **PLUS** this custom, logo'd, limited edition, **LARGE Front Sight Warrior Handgun Range Bag or Double Rifle Range Bag** that you cannot buy at any price. **PLUS** I will give you **TWO Front Sight FMK 9mm Pistols** to carry in the Range Bag, **PLUS** I will give you a **Front Sight SP1 Pizza Pistol** in your choice of **9mm or .40S&W!**



Your Information:

First Name:*	Last Name:*	
<input type="text"/>	<input type="text"/>	
Membership Type:* (Current)	Membership Number:* (Including words/letters)	
<input type="text" value="Select Membership"/>	<input type="text"/>	
Address:*	Address 2:	
<input type="text"/>	<input type="text"/>	
City:*	State:*	Zip Code:*
<input type="text"/>	<input type="text"/>	<input type="text"/>
Email Address:*	Confirm Email Address:*	
<input type="text"/>	<input type="text"/>	
Phone:	My Front Sight Username:(Optional)	
<input type="text"/>	<input type="text"/>	

Payment Information:



Name on Card:*	Card Number:*
<input type="text"/>	<input type="text"/>
Expiration Date (mm/yy):*	Security Code:* What is this?
<input type="text"/>	<input type="text"/>

[Click Here if your Billing Address is Different Than Your Shipping Address.](#)

If you would like to use multiple credit cards, call my Concierge Staff at (800) 987-7719 between the hours of 8:30am and 5:30pm PST and they will assist you in your purchase.

Because we have filed our lawsuit and the case is in litigation, the Concierge Staff will only be able answer questions about participating in the Front Sight War Chest Fund #3.

If after reading all of the information I have shared with you, you still have questions that only I can answer, then please e-mail me directly at DrPiazza@FrontSight.com and I will personally respond.

If after I have personally responded to your email, you still have questions that only I can answer, then feel free to call me on my cell phone at (707) 838-3450 and I will personally answer your questions over the phone. This is a private e-mail and phone number so please keep it to yourself, but feel free to use them should you really have important questions preventing you from taking full advantage of my way of honoring you for your alignment with Front Sight's purpose and your participation in our phenomenal success.

Confirm Your Order

Select Your Level of Participation in Front Sight's Litigation War Chest and Geometric "Exchange in Abundance" Reward above.

I UNDERSTAND and agree that all Front Sight Products, Front Sight Certificates and Front Sight Memberships offered in the past, the present, and future, including "To Be Determined" memberships, as well as any special memberships not listed here, are NON REFUNDABLE, no exceptions. I further understand I may sell and transfer "To Be Determined" memberships, but I am not allowed to sell/transfer them to existing Front Sight members or advertise the sale of any memberships in any public media. I also acknowledge that Front Sight is not guaranteeing a specific date of resort completion or specific time when Dr. Piazza will gently and generously turn over the ownership of Front Sight Firearms Training Institute to his loyal and supportive members, although Front Sight is making every effort and working diligently to complete construction within the next 18 months.

Enter the information above and press the Submit button to process your order securely.

Submit

* Required

Having Trouble? [Click here.](#)

Thanks again for your participation in Front Sight's phenomenal success!

Sincerely,

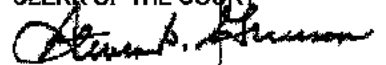


Dr. Ignatius Piazza
Founder and Director



Front Sight's Litigation War Chest is a non-refundable membership program. The amount of the membership fee is determined by the level of participation. The membership fee is a one-time fee and does not include any recurring charges. The membership fee is a non-refundable contribution to the Litigation War Chest. The membership fee is a non-refundable contribution to the Litigation War Chest. The membership fee is a non-refundable contribution to the Litigation War Chest.

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1 MOT

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

6 **ALDRICH LAW FIRM, LTD.**
7 7866 West Sahara Avenue
8 Las Vegas, Nevada 89117
9 Telephone: (702) 853-5490
10 Facsimile: (702) 227-1975
11 *Attorneys for Plaintiff*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

16 Plaintiff,

17 vs.

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

Defendants.

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

**MOTION TO SEAL AND/OR
REDACT PLEADINGS AND
EXHIBITS TO PROTECT
CONFIDENTIAL FINANCIAL
INFORMATION, MOTION TO
AMEND PARAGRAPH 2.3 OF
PROTECTIVE ORDER, MOTION
FOR ORDER SHORTENING TIME,
AND ORDER SHORTENING TIME**


DEPARTMENT XVI
NOTICE OF HEARING
DATE 2/20/19 TIME 9:00am
APPROVED BY CJ

2019-13-1 APR 11 8:40 AM

1 This Motion is made and based upon the pleadings and papers on file herein, the
2 following Points and Authorities, the Declaration of John P. Aldrich, Esq., and any attached
3 exhibits.

4 DATED this 12 day of February, 2019.

5 ALDRICH LAW FIRM, LTD.

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

16 **DECLARATION OF JOHN P. ALDRICH IN SUPPORT OF MOTION TO SEAL AND**
17 **REDACT, MOTION TO AMEND PROTECTIVE ORDER, AND MOTION FOR ORDER**
18 **SHORTENING TIME**

19 State of Nevada)
20) ss
21 County of Clark)

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

- 23 1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and
24 am a partner in the law firm of Aldrich Law Firm, Ltd. I am counsel for Plaintiff in this action.
2. My office address is 7866 West Sahara Avenue, Las Vegas, Nevada 89117.
3. The following facts set forth in this Affidavit are true and correct to the best of my
knowledge, or where stated, are upon information and belief. I make this Declaration based on
my personal knowledge of the facts and matters of this action, and to establish good cause
justifying a shortening of time for the hearings on Plaintiff's Motion to Seal and/or Redact

1 Pleadings and Exhibits to Protect Confidential Financial Information and Motion to Amend
2 Paragraph 2.3 of Protective Order.

3 4. There exists good cause to hear Plaintiff's Motion to Seal and/or Redact Pleadings
4 and Exhibits to Protect Confidential Financial Information and Motion to Amend Paragraph 2.3
5 of Protective Order on shortened time.

6 5. Plaintiff is a privately-held LLC, with a business model that is unique. Plaintiff
7 has provided thousands of pages of private, confidential, proprietary information to Defendants.
8 As explained herein, Defendants have disclosed confidential financial information in the form of
9 parts of Plaintiff's tax returns, as well as making comments about the contents of Plaintiff's tax
10 returns in pleadings and/or Declarations.

11 6. As has been explained in prior pleadings, as well as below, Defendants have a
12 confidential relationship with Plaintiff. The tax return information was identified as confidential
13 in Plaintiff's Motion for Protective Order, and specifically described therein. Defendants'
14 counsel, Keith Greer, Esq., acknowledged the confidentiality of exactly the information
15 Defendants disclosed at a hearing on December 5, 2019. (See page 23 of the Transcript from the
16 December 5, 2018 hearing, which is not attached here because it has been deemed confidential.)
17 Exhibits 6 and 7 of Robert Dziubla's Declaration should have been filed under seal and all
18 references to confidential protected information should have been redacted in the first place.
19 Plaintiff's tax return information has now been placed in the public domain and must be sealed
20 and removed from the public domain, and all references thereto redacted, so as to protect this
21 confidential proprietary information. This is of the utmost importance to Plaintiff, and must be
22 heard on an order shortening time.

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1 7. Upon receipt of the pleadings disclosing the confidential tax information, I
2 demanded that Defendants immediately take steps to have Plaintiff's tax return information
3 removed from the public domain and seal those exhibits, as well as redact or seal any comments
4 related to those exhibits in the pleadings. Despite Mr. Greer's prior acknowledgement of the
5 protective order and this precise information's protection thereunder, Defendants, through
6 counsel, have refused to do so, citing paragraph 2.3 of the Protective Order that was previously
7 entered. (See E-mail exchange between John P. Aldrich, Esq. and Keith Greer, Esq., dated
8 February 7, 2019 and attached hereto as Exhibit 1.) The Protective Order was entered to protect
9 exactly this type of information, as explained therein. The Motion for Protective Order was not
10 opposed by Defendants.

11 8. Mr. Greer and I also had a telephone conference on Thursday, February 7, 2019,
12 during which Mr. Greer stated he would get back to me by Friday, February 8, 2019 and advise
13 if Defendants would stipulate to seal and/or redact the information identified by Plaintiff. Mr.
14 Greer eventually responded on Monday, February 11, 2019, again claiming that paragraph 2.3 of
15 the Protective Order justifies Defendants' bad faith actions. (E-mail from Keith Greer, Esq., to
16 John P. Aldrich dated February 11, 2019, attached hereto as Exhibit 2.)

17 9. Plaintiff respectfully requests that the Court hear this matter as soon as possible.
18 The next hearing scheduled in this case is on February 28, 2019 on the following matters: (1)
19 Motion to Compel and for Sanctions; (2) Defendants' Counter-Motion for Relief from the
20 November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting of Defendant
21 EB5 Impact Advisors LLC; and (3) Defendant Las Vegas Development Fund LLC's Motion for
22 Appointment of Receiver and Request for Order Shortening Time. These items must be sealed
23 and/or redacted immediately. Plaintiff cannot wait until either the ordinary course setting or the
24

1 next hearing on February 28, 2019. Plaintiff respectfully requests that this matter be heard as
2 soon as possible.


3 10. There is a compelling privacy or safety interest that outweighs the public interest
4 in access to the court record. Plaintiff is seeking to protect proprietary business information
5 related to its business operations. This information at issue in this motion relates to Plaintiff's
6 tax returns. Plaintiff and Defendants must protect the public disclosure of the confidential,
7 proprietary information.

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

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

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

14 DATED this 12 day of February, 2019.

15 
16 John P. Aldrich, Esq.
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1 **ORDER SHORTENING TIME**

2 Good cause appearing therefore,

3 **IT IS HEREBY ORDERED** that the time for the hearing on Plaintiff's Motion to Seal
4 and/or Redact Pleadings and Exhibits to Protect Confidential Financial Information and Motion
5 to Amend Paragraph 2.3 of Protective Order in the above-entitled matter be shortened, and the
6 same will be heard on the 20 day of February, 2019, at the hour of 9:00: am a.m.
7 in Dept. 16 of the Eighth Judicial District Court.

8 DATED this 14 day of February, 2019.

9 
10 **DISTRICT COURT JUDGE**

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **STATEMENT OF FACTS**

15 Despite the fact that this case is still in the initial pleadings stage, it already has a
16 somewhat tortured history. The Court is well aware of the many motions and hearings that have
17 already occurred, so Plaintiff will not recite the procedural history here except as pertinent for
18 the instant motion. There are a plethora of other motions pending which the Court will hear over
19 the next few weeks.

20 On February 6, 2019, Defendants filed a Motion for Appointment of Receiver.
21 Defendants have attached portions of Front Sight's tax returns and placed that information in the
22 public domain. (See Exhibits 6 and 7 to Robert Dziubla's Declaration in Support of Motion for
23 Appointment of Receiver.) Defendants have also made reference to the tax return information in
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1 its Motion for Appointment of Receiver. Defendants are in violation of the Protective Order that
2 was entered by the Court, Mr. Greer having already acknowledged in open court that this exact
3 information was subject to the Protective Order, as well as the general public policy and duty to
4 keep tax returns and other private financial information out of the public domain. Additionally,
5 Defendants have a confidential relationship with Plaintiff and have a duty to keep Plaintiff's tax
6 returns and other private information private and not file them in the public domain. Defendant
7 LVDF, as a lender, also has a duty to keep those records private. Defendants have clearly acted
8 in bad faith in an effort to cause harm to Plaintiff and its principal, Dr. Ignatius Piazza.

9 Plaintiff demanded that Defendants immediately take steps to have Plaintiff's tax return
10 information removed from the public domain and seal those exhibits, as well as redact or seal
11 any comments related to those exhibits in the pleadings. Defendants, through counsel, have
12 refused to do so. (See E-mail exchange between John P. Aldrich, Esq. and Keith Greer, Esq.,
13 dated February 7, 2019 and attached hereto as Exhibit 1 and Declaration of John P. Aldrich,
14 above.) Mr. Aldrich and Mr. Greer also had a telephone conference on Thursday, February 7,
15 2019, during which Mr. Greer stated he would get back to Mr. Aldrich by Friday, February 8,
16 2019 and advise if Defendants would stipulate to seal and/or redact the information identified by
17 Plaintiff. Mr. Greer eventually responded on Monday, February 11, 2019, again claiming that
18 paragraph 2.3 of the Protective Order protects Defendants' bad faith actions. (E-mail from Keith
19 Greer, Esq., to John P. Aldrich dated February 11, 2019, attached hereto as Exhibit 2.)
20 Defendants' continued refusal to remedy the blatant disclosure of confidential information has
21 necessitated the filing of this Motion.

22 Previously, on October 4, 2018, Plaintiff filed a Motion for Protective Order. Besides the
23 fact that one of Defendants is a lender and had an independent duty to keep Plaintiff's
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1 confidential financial information private, the Defendants collectively have a confidential
2 relationship that requires them to keep Plaintiff's tax information confidential. Defendants have
3 long been on notice that Plaintiff identified these records as confidential because Plaintiff
4 described those records in its Motion for Protective Order. On page 16 of the Motion for
5 Protective Order, Plaintiff stated the following:

6 Plaintiff is seeking to protect proprietary business information related to its
7 project. This information contains various types of confidential and proprietary
8 information, including plans for its project, projections, financial information, or
9 references to this type of information. Plaintiff has provided literally thousands of
10 pages of confidential financial information, including taxes, bank accounts, etc.,
11 to Defendants. Defendants have also provided information that includes trade
12 secrets and information about how Plaintiff's business is run and the like.

10 Plaintiff seeks to preclude Defendants (or any party to the litigation) from
11 disclosing confidential, proprietary, trade secret, or other similar protected
12 information. Any pleadings or exhibits containing such information should be
13 sealed and protected from disclosure.

12 Defendants did not oppose that motion and a protective order was entered on November
13 27, 2018. Mr. Greer acknowledged the applicability of the protective order at the hearing on
14 December 5, 2018. (See page 23 of the Transcript from the December 5, 2018 hearing, not
15 attached because confidential.)

16 Consistent with the Motion, paragraph 1.2 of the Protective Order identifies financial
17 records (which certainly include tax returns) as confidential. Paragraph 2.3 does not absolve
18 Defendants of their duties under the Protective Order or the law. More specifically, paragraph
19 2.3 provides, in pertinent part, that "Material that was in the hands of the Receiving Party [i.e.,
20 Defendants] prior to disclosure in this action and that was subject to a confidentiality obligation
21 between the Parties shall be made subject to this Order." Moreover, Defendants have the duty to
22 prove the information "was not subject to a confidentiality obligation or was public knowledge,"
23 which it cannot do. Defendants collectively have violated the duties of their confidential
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1 relationship, not to mention in violation of long-standing public policy that tax returns remain
2 private. Defendants LVDF and Dziubla are in violation of their duties as a lender. These blatant
3 violations of the Court's Protective Order must be remedied immediately.

4 Due to Defendants' refusal to remedy their bad faith conduct, Plaintiff respectfully moves
5 this Court for the following relief:

- 6 1. For an Order sealing Exhibits 6 and 7 of the Declaration of Robert Dziubla;
- 7 2. For an Order redacting paragraph 19 of the Declaration of Robert Dziubla; and
- 8 3. For an Order redacting the following from Defendants' Motion for Appointment
9 of Receiver:

- 10 a. Page 11, line 18, starting with "to wit:" through page 12, line one ending
11 with "Project;"
- 12 b. Footnote 8 on page 11; and
- 13 c. Page 25, line 11 starting with "The present" through line 17 "must stop."

14 This must be done immediately and the exhibits and information referenced must be
15 sealed immediately.

16 Further, Plaintiff moves to revise and amend paragraph 2.3 to add the following phrase to
17 the end: "All Material fitting the description of "confidential information" as set forth in
18 paragraph 1.2 of this Protective Order that has been provided to any Defendant by Plaintiff, at
19 any time, is subject to confidentiality obligations, and to the extent any party wishes to file such
20 confidential information with a motion, that party must first apply for a sealing order."

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II.

LEGAL ARGUMENT

A. **THE COURT SHOULD SEAL EXHIBITS 6 AND 7 TO ROBERT DZIUBLA'S
DECLARATION AND REDACT PORTIONS OF THE PLEADINGS THAT
DISCLOSE CONFIDENTIAL INFORMATION**

Nevada Supreme Court Rules, Part VII, pertain to the sealing and redacting Court records. Pursuant to Rule 3(4):

The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. The parties' agreement alone does not constitute a sufficient basis for the court to seal or redact court records. . .

Rule 3(4) also sets forth eight specific instances that warrant the sealing of records:

(b) The sealing or redaction furthers an order entered under NRCP 12(f) or JCRCP 12(f) or a protective order entered under NRCP 26(c) or JCRCP 12(c);

....

(g) The sealing or redaction is necessary to protect intellectual proprietary or property interests such as trade secrets as defined in NRS 600A.030(5);

(h) The sealing or redaction is justified or required by another identified compelling circumstance.

Rule 3(4)(h), cited above, provides a catch-all provision, which allows the sealing of court records that is required by a compelling circumstance. Plaintiff is seeking an order to seal Exhibits 6 and 7 and to redact portions of the pleadings, as set forth herein.

Finally, Rule 3(1) requires that a request to seal records must be in writing, must disclose in the document caption that it is a request to seal records, and must be served on all parties to the lawsuit. Plaintiff will serve the Motion to Seal and/or Redact Pleadings and Exhibits to Protect Confidential Financial Information and Motion to Amend Paragraph 2.3 of Protective

1 Order on all Defendants through their counsel. Plaintiff respectfully moves this court for the
2 following relief:

- 3 1. For an Order sealing Exhibits 6 and 7 of the Declaration of Robert Dziubla;
- 4 2. For an Order redacting paragraph 19 of the Declaration of Robert Dziubla; and
- 5 3. For an Order redacting the following from Defendants' Motion for Appointment of
6 Receiver:

- 7 a. Page 11, line 18, starting with "to wit:" through page 12, line one ending with
8 "Project;"
- 9 b. Footnote 8 on page 11; and
- 10 c. Page 25, line 11 starting with "The present" through line 17 "must stop."

11 **B. THERE IS A FIDUCIARY RELATIONSHIP BETWEEN PLAINTIFF AND**
12 **DEFENDANTS**

13 Defendants have argued that the relationship between Plaintiff and Defendants is nothing
14 more than lender and borrower and that a relationship of lender and borrower does not support a
15 finding of special trust under Nevada law. *Giles. Gen. Motors Acceptance Corp.*, 494 F.3d 865,
16 882 (9th Cir. 2007). While Defendants would like the Court to believe the relationship between
17 Plaintiff and Defendants is nothing more than lender and borrower, in actuality the relationship is
18 a confidential relationship characterized by special trust.

19 Under Nevada law, a fiduciary relationship exists when one party is bound to act for the
20 benefit of the other party. "Such a relationship imposes a duty of the utmost good faith."
21 *Hoopes v. Hammargren*, 102 Nev. 425, 725 P.2d 238, 242 (1986). "The essence of a fiduciary
22 or confidential relationship is that the parties do not deal on equal terms, since the person in
23 whom trust and confidence is in a superior position to exert unique influence..." *Powers v.*
24 *United Servs. Auto Ass'n*, 115 Nev. 38, 979 P.2d 1286, 1288 (1999). Nevada law recognizes a

1 duty owed in “confidential relationships” where “one party gains the confidence of the other and
2 purports to act or advise with the other’s interests in mind.” *Perry v. Jordan*, 111 Nev. 943, 900
3 P.2d 335, 338 (1995) (emphasis added). The duty owed is akin to a fiduciary duty. “When a
4 confidential relationship exists, the person in whom the special trust is placed owes a duty to the
5 other party similar to the duty of a fiduciary, requiring the person to act in good faith and with
6 due regard to the interests of the other party.” *Id.*

7 In the instant matter, the relationship between Plaintiff and Defendants is much more than
8 that of lender and borrower. Defendants have a fiduciary responsibility to Front Sight, due to the
9 special relationship of trust between Front Sight and Defendants. Plaintiff advanced over
10 \$444,000 in marketing fees to Defendants. Lenders do not charge marketing fees. They loan
11 money. Now, contrary to Defendants’ repeated assertions, Plaintiff has proven that Defendants
12 Dziubla (as agent of Las Vegas Development Fund) and Las Vegas Development Fund, LLC
13 have accepted money from Plaintiff that was earmarked for marketing purposes.

14 Moreover, on or about November 30, 2018, Defendant EB5 Impact Advisors LLC
15 produced some documents related to Defendant’s expenditures of Plaintiff’s funds. However,
16 the documents provided by Defendant fall woefully short of the information and documentation
17 Defendant EB5IA was required to produce pursuant to the Court’s Order. Defendant provided
18 copies of some checks and bank statements for EB5 Impact Advisors LLC. The checks show a
19 plethora of what appear to be inappropriate expenditures, including for example:

- 20 • Payment of rent for a location in Nevada and California for an unrelated company
21 separately owned by Defendant Jon Fleming.
- 22 • “Distributions” to an entity that appears to be owned Defendant Jon Fleming.
- 23 • “Consulting” fees paid to a company owned by Robert Dziubla.

24

1 • A substantial amount of money paid out in attorney's fees. It is difficult to come
2 up with a justification as to how attorney's fees for marketing could reach the amount paid,
3 particularly when Plaintiff paid for the formation of EB5IC.

4 • Tens of thousands of dollars paid to unidentified persons or entities.
5 • Numerous transactions for what appear to be personal expenses of the
6 Defendants, for things such as bar dues, Starbucks, Sharp Healthcare, Discount Tire, smog
7 checks for vehicles, carwashes, restaurants, Costco, gas and fees for a speeding ticket.

8 Conspicuously absent are any invoices or receipts related to the expenditures. There are
9 no invoices provided for any of these expenditures, making it difficult, if not impossible, to
10 ascertain how these expenses could be justifiable marketing expenses.

11 Defendant EB5IA, and Defendant Dziubla, who runs that entity, have provided only a
12 fraction of the documents they were ordered to provide by the Court on. Defendants' failure to
13 abide by this Court's order is addressed in a Motion to Compel that is set to be heard on
14 February 28, 2019.

15 Moreover, Defendants made multiple repeated fraudulent misrepresentations to induce
16 Plaintiff to finance its project with Defendants, as well as providing false updates after the
17 relationship began. (Sec. Am. Compl. ¶¶11-73.) Defendants are much more than just a lender.

18 **C. PLAINTIFF'S TAX RETURNS MUST BE SEALED AND ANY REFERENCE TO**
19 **INFORMATION IN THE TAX RETURNS AND/OR CONFIDENTIAL**
20 **FINANCIAL INFORMATION MUST BE REDACTED**

21 There is a compelling privacy or safety interest that outweighs the public interest in
22 access to the court record. Indeed, Defendants should never have filed any portion of Plaintiff's
23 tax returns. The tax returns must be sealed and any information mentioned in the pleadings must
24 be redacted.

1 Tax records and other financial information are protected. Indeed, in discovery, a party
2 must show a compelling need for tax returns and other financial information; otherwise, that
3 discovery is not allowed. See, e.g., *Klein v. Freedom Strategic Partners, LLC*, 2009 U.S. Dist.
4 LEXIS 52241 (D. Nev.) (“Although Nevada law does not recognize a *privilege* with respect to
5 tax returns, the Nevada Supreme Court has recognized limitations on the discovery of
6 information contained in tax returns to avoid an invasion into the litigant’s private affairs....”
7 (emphasis added)); *Schlatter v. Eighth Jud. Dist. Ct.*, 99 Nev. 189, 561 P.2d 1342 (1977)
8 (disclosure of matter contained in tax records may not be required in the absence of a showing
9 that the information is otherwise unobtainable” and “carte blanche discovery of financial
10 information is an excessive invasion of privacy interest”). Controlling the disclosure of private
11 financial information is of the utmost importance because the improper disclosure of financial
12 material “is irretrievable once made.” *Id.* Those rules and policies also apply to this situation,
13 where a lender has received confidential financial and tax information at part of a loan
14 application.

15 Just because a borrower has provided tax and other financial information as part of the
16 loan application process does not mean that a borrower has waived its privacy rights and the
17 lender can publish it to the world. Although discussed in the context where a statutory privilege
18 for tax returns applies, the reasoning set forth by the Court of Appeals of California is instructive
19 as to Plaintiff’s privacy rights and expectation of privacy in this instance. The Court of Appeals
20 for California explained:

21 Neither the parties nor we have found any reported cases in which a
22 waiver has been based upon a party’s submission of his or her tax returns to a
23 bank as part of a loan application....

24 A bank customer reasonably expects the bank to maintain the
confidentiality of private financial matters....While there is no “bank-customer

1 privilege akin to the lawyer-client privilege” or other statutory privileges,
2 confidential information given to a bank by its customers is protected by the right
3 to privacy that became a part of the California Constitution after the judicial
4 formulation of the tax-return privilege....

5 Thus, there is a right to privacy in confidential customer information
6 whatever form it takes, whether that form be tax returns, checks, statements, or
7 other account information....

8 *Fortunato v. Superior Court*, 114 Cal. App. 4th 475, 480-81 (2003)(internal citations omitted).

9 Even when there is not a statutory tax return privilege, many courts have recognized that
10 tax returns are treated differently than other types of financial records. For example, in *In re*
11 *Beeson*, while also noting that “privacy once broken...cannot be retrieved,” the Court of Appeals
12 of Texas explained:

13 Tax returns are treated differently than other types of financial records, as
14 evidenced by the supreme court’s expressed “reluctance to allow uncontrolled and
15 unnecessary discovery of federal income tax returns.” ... This is because federal
16 income tax returns are considered private and the protection of that privacy is of
17 constitutional importance.

18 *In re Beeson*, 378 S.W. 3d 8, 12 (Tex. Ct. App. 2011)(internal quotations omitted). Similarly, in
19 *Hollinger Int’l, Inc. v. Hollinger, Inc.*, 2005 U.S. Dist. LEXIS 30420 (N.D. Ill. 2005), the
20 Northern District of Illinois found “good cause for prohibiting the public disclosure of the
21 individual Defendants’ tax returns in court filings....” and specifically noted “the public has a
22 strong interest in ensuring the privacy of taxpayers’ returns.” *Id.* at *14. The Court of Appeals
23 of California adopted a similar approach and explained the rationale as follows:

24 Even if confidential customer information is not “wholly privileged [or]
insulated from scrutiny by civil litigants,” a court faced with a motion for
protective order should carefully balance “the right of civil litigants to discover
relevant facts, on the one hand, with the right of bank customers to maintain
reasonable privacy regarding their financial affairs, on the other hand.

Fortunato, 114 Cal. App. 4th at 481.

1 Despite the fact that Mr. Greer had acknowledged Defendants' duty not to disclose this
2 exact information because of the Protective Order at the December 5, 2018 hearing, Defendants
3 invoked paragraph 2.3 as the basis for Defendants to blatantly breach their duties to Plaintiff and
4 disclose Plaintiff's tax return information, presumably claiming that because the information was
5 provided before the entry of the Protective Order, they had no duty to protect Plaintiff's tax
6 returns from disclosure. This, however, is incorrect.

7 The court in *Fortunato* continued:

8 More compelling, however, is the absence of a truly *voluntary*
9 relinquishment.... "[F]or all practical purposes, the disclosure by individuals or
10 business firms of their financial affairs to a bank is not entirely volitional, since it
11 is impossible to participate in the economic life of contemporary society without
12 maintaining a bank account".... Nor do we view compliance with a bank's
13 requirement of submitting tax returns with a loan application to be an entirely
14 voluntary relinquishment, since that, too, is a fact of economic life, to which any
15 home or business owner can attest."

16 The waiver of both privileges and the constitutional right to privacy "must
17 be narrowly rather than expansively construed," in order to protect the purposes
18 of the privilege or right.

19 *Forunato*, 114 Cal. App. 4th at 481-82 (emphasis in original; internal citations omitted). See
20 also, *Bank of America, N.A. v. Hensley Props., L.P.*, 2008 U.S. Dist. LEXIS 111541 (E.D. Cal.
21 July 10, 2008)("while [borrowers] voluntarily gave their tax returns to [lender], they have not
22 relinquished them for publication to the world at large.... Accordingly, recognizing the strong
23 privacy rights attached to tax returns, the court orders [lender] not to disclose those documents to
24 third parties, and to the extent it wishes to file them with a motion, to first apply for a sealing
order").

 "While [Nevada] does not recognize a privilege for tax returns...public policy suggests
that tax returns or financial status not be had for the mere asking." *Hetter v. Dist. Ct.*, 110 Nev.
513, 520, 874 P.2d 762, 766 (1994). Even if its tax returns are not privileged, Plaintiff has not

1 relinquished its privacy rights to its tax returns or other financial information. Plaintiff has not
2 relinquished its privacy rights to any of the information it gave to Defendants in anticipation of
3 the \$75 million loan they were promised – of which less than 10% was delivered.

4 Given the allegations spelled out in great detail in the Second Amended Complaint, it is
5 apparent that Defendants obtained Plaintiff's extensive financial information – including its tax
6 returns – under false pretenses. By attaching Plaintiff's tax returns to a pleading and publishing
7 them to the world, Defendants have shown the Court and the world that they are not trustworthy.
8 Plaintiff's tax information must be sealed and any references thereto in the pleadings redacted.

9 Plaintiff seeks to protect proprietary business information related to its project. This
10 information contains various types of confidential and proprietary information, including plans
11 for its project, projections, and financial information, and references to such information.
12 Accordingly, sealing the financial documents would protect against the disclosure of proprietary
13 and/or confidential business information.

14 **D. IN THE EVENT THE COURT FINDS THE PROTECTIVE ORDER TO BE**
15 **AMBIGUOUS, THE PROTECTIVE ORDER SHOULD BE AMENDED**

16 Further, Plaintiff moves to revise and amend paragraph 2.3 to add the following phrase to
17 the end: "All Material fitting the description of "confidential information" as set forth in
18 paragraph 1.2 of this Protective Order that has been provided to any Defendant by Plaintiff, at
19 any time, is subject to confidentiality obligations under this Protective Order, and to the extent
20 any party wishes to file such confidential information with a motion, that party must first apply
21 for a sealing order."

22 NRCp 26(c) provides that:

23 [u]pon motion by a party or by the person from whom discovery is sought,
24 accompanied by a certification that the movant has in good faith conferred or
attempted to confer with the other affected parties in an effort to resolve the

1 dispute without court action, and for good cause shown, the court in which the
2 action is pending may make any order which justice requires to protect a party or
3 person from annoyance, embarrassment, oppression, or undue burden or expense,
4 including ... (4) that certain matters not be inquired into, or that the scope of the
5 discovery be limited to certain matters ... (7) that a trade secret or other
6 confidential research, development, or commercial information not be revealed or
7 be revealed only in a designated way;[.]

8 The Court has already granted and entered a Protective Order. Plaintiff simply asks to
9 amend it to even further clarify for Defendants what their duties are with respect to protecting
10 Plaintiff's financial and business information.

11 **E. PLAINTIFF'S MOTION SHOULD BE HEARD ON SHORTENED TIME**

12 EDCR 2.26 states in pertinent part:

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

20 As set forth above, Plaintiff is a privately-held LLC, with a business model that is unique.
21 Plaintiff has provided thousands of pages of private, confidential, proprietary information to
22 Defendants. As explained herein, Defendants have disclosed confidential financial information
23 in the form of parts of Plaintiff's tax returns. This information was identified as confidential in
24 Plaintiff's Motion for Protective Order, and specifically described therein, and Defendants'
counsel, Mr. Greer, previously acknowledged the applicability of the Protective Order at the
December 5, 2018 hearing. Exhibits 6 and 7 of Robert Dziubla's Declaration should have been
filed under seal and all references to confidential protected information redacted in the first
place. Plaintiff's tax return information has now been placed in the public domain and must be
sealed and removed from the public domain, and all references thereto redacted, so as to protect

1 this confidential proprietary information. This is of the utmost importance to Plaintiff, and must
2 be heard on an order shortening time.

3 Upon receipt of the pleadings disclosing the confidential tax information, undersigned
4 counsel demanded that Defendants immediately take steps to have Plaintiff's tax return
5 information removed from the public domain and seal those exhibits, as well as redact or seal
6 any comments related to those exhibits in the pleadings. Defendants, through counsel, have
7 refused to do so, citing paragraph 2.3 of the Protective Order that was previously entered.
8 (Exhibit 1.) The intent of the Protective Order was to protect exactly this type of information, as
9 explained therein. The Motion for Protective Order was not opposed.

10 Counsel also had a telephone conference on Thursday, February 7, 2019, during which
11 Mr. Greer stated he would get back to me by Friday, February 8, 2019 and advise if Defendants
12 would stipulate to seal and/or redact the information identified by Plaintiff. Mr. Greer eventually
13 responded on Monday, February 11, 2019, again claiming that paragraph 2.3 of the Protective
14 Order justifies Defendants' bad faith actions. (Exhibit 2.)

15 Plaintiff respectfully requests that the Court hear this matter as soon as possible. The
16 next hearing scheduled in this case is on February 28, 2019 on the following matters: (1)
17 Motion to Compel and for Sanctions; (2) Defendants' Counter-Motion for Relief from the
18 November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting of Defendant
19 EB5 Impact Advisors LLC; and (3) Defendant Las Vegas Development Fund LLC's Motion for
20 Appointment of Receiver and Request for Order Shortening Time.

21 There is a compelling privacy interest that outweighs the public interest in access to the
22 court record. Plaintiff is seeking to protect proprietary business information related to its
23
24

1 business operations. This information at issue in this motion relates to Plaintiff's tax returns.
2 Plaintiff must protect the public disclosure of the confidential, proprietary information.

3 These items must be sealed and/or redacted immediately. Plaintiff cannot wait until
4 either the ordinary course setting or the next hearing on February 28, 2019. Plaintiff respectfully
5 requests that this matter be heard as soon as possible.

6 Based on the foregoing, Plaintiff respectfully requests that its Plaintiff's Motion to Seal
7 and/or Redact Pleadings and Exhibits to Protect Confidential Financial Information and Motion
8 to Amend Paragraph 2.3 of Protective Order be heard on shortened time.

9 **III.**

10 **CONCLUSION**

11 Based upon the above, Plaintiff respectfully requests that the Court grants its Motion to
12 Seal and/or Redact Pleadings and Exhibits to Protect Confidential Financial Information and
13 Motion to Amend Paragraph 2.3 of Protective Order, as requested herein.

14 DATED this 12 day of February, 2019.

15 **ALDRICH LAW FIRM, LTD.**

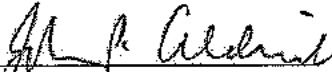
16 
17 John P. Aldrich, Esq.
Nevada Bar No. 6877
18 Catherine Hernandez, Esq.
Nevada Bar No. 8410
7866 West Sahara Avenue
19 Las Vegas, NV 89117
Tel (702) 853-5490
20 Fax (702) 226-1975
21 *Attorneys for Plaintiff*

EXHIBIT 1

EXHIBIT 1

From: John Aldrich
To: "Keith Greer"
Cc: kholbert@farmercase.com; traci@johnaldrichlawfirm.com; "Cathy Hernandez"
Subject: RE: Violation of Protective Order
Date: Thursday, February 7, 2019 5:00:37 PM

Keith,

Clearly the intention of the protective order, as explained in the Motion, was to protect exactly this type of information. Are you taking the position that your clients had no obligation of confidentiality related to this information?

Or can we just agree that those items be sealed and redacted and I will circulate a stipulation?

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

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From: Keith Greer [mailto:keith.greer@greerlaw.biz]
Sent: Thursday, February 7, 2019 4:54 PM
To: John Aldrich
Cc: kholbert@farmercase.com; traci@johnaldrichlawfirm.com; Cathy Hernandez
Subject: Re: Violation of Protective Order

Please refer to Section 2.3 of the Protective Order.

Sent from my iPhone

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

Ph (858)613-6677
Fax (858)613-6680

On Feb 7, 2019, at 4:02 PM, John Aldrich <jaldrich@johnaldrichlawfirm.com> wrote:

Keith and Kathryn,

I am in receipt of the Motion for Appointment of Receiver that was filed yesterday. You and Defendants are in violation of the Protective Order that was ordered by the Court. You have attached financial documents of Front Sight and placed that information in the public domain, specifically, Exhibits 6 and 7 to Mr. Dziuble's Declaration. We hereby demand that you immediately take steps to have that removed from the public domain and seal those exhibits, as well as redact or seal any comments related to those exhibits in the pleadings. This must be done **immediately**.

Paragraph 1.2 of the Protective Order identifies financial records as confidential. Further, you have long been on notice that we identified these records as confidential because we described those records in our Motion for Protective Order, which you and Defendants did not oppose. On page 16 of the Motion, we stated the following:

Plaintiff is seeking to protect proprietary business information related to its project. This information contains various types of confidential and proprietary information, including plans for its project, projections, financial information, or references to this type of information. Plaintiff has provided literally thousands of pages of confidential financial information, including taxes, bank accounts, etc., to Defendants. Defendants have also provided information that includes trade secrets and information about how Plaintiff's business is run and the like.

Plaintiff seeks to preclude Defendants (or any party to the litigation) from disclosing confidential, proprietary, trade secret, or other similar protected information. Any pleadings or exhibits containing such information should be sealed and protected from disclosure.

To the extent that you may now claim you were unaware that Front Sight's financial records are confidential, we again reiterate that all financial documents that any Defendant has received related to the loan at issue in this case are confidential.

Please advise immediately what steps you will take to have these documents removed from the public domain by the close of business tomorrow. Alternatively, if you will agree to sign a stipulation that the court seal and/or redact the confidential information, I will prepare a stipulation and circulate it for signature tomorrow morning.

I await your immediate response.

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
jaldrich@johnaldrichlawfirm.com
Tel (702) 853-5490

Fax (702) 227-1975

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EXHIBIT 2

EXHIBIT 2

From: Keith Greer
To: John Aldrich; Kathryn Holbert
Subject: Protective Order
Date: Monday, February 11, 2019 11:46:23 AM

Dear Mr. Aldrich:

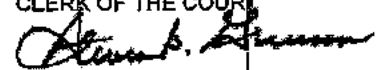
Please be advised that we will not be able to stipulate to sealing the minimal financial information that we disclosed in our motion for receivership. We based our non-opposition of Plaintiff's motion for protective order on our determination that the proposed order was reasonable and fair. And Section 2.3 of the Protective Order makes it clear that documents already in the presenting party's possession are not subject to the Protective Order, unless they are subject to a pre-existing confidentiality agreement. We were unable to identify any such pre-existing document, and thus did not feel constrained by the Protective Order. That said, you will note that we endeavored to redact all unnecessary information.

I apologize for not getting back to you last week. Please let me know if you are able to identify a pre-existing confidentiality agreement that would impact our assessment of this issue.

Hoc Securior,

C. Keith Greer, Esq.
Law offices of Greer & Associates, APC
17150 Via del Campo, Suite 100
San Diego, CA 92127
Phone (858)613-6677
Cell (858)361-4640
Fax (858)613-6680

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1 **NEO**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

Catherine Hernandez, Esq.

3 Nevada Bar No. 8410

ALDRICH LAW FIRM, LTD.

4 7866 West Sahara Avenue

Las Vegas, Nevada 89117

5 Telephone: (702) 853-5490

Facsimile: (702) 227-1975

6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 vs.

13 LAS VEGAS DEVELOPMENT FUND LLC, a
14 Nevada Limited Liability Company; EB5
15 IMPACT CAPITAL REGIONAL CENTER
16 LLC, a Nevada Limited Liability Company;
17 EB5 IMPACT ADVISORS LLC, a Nevada
18 Limited Liability Company; ROBERT W.
19 DZIUBLA, individually and as President and
20 CEO of LAS VEGAS DEVELOPMENT
21 FUND LLC and EB5 IMPACT ADVISORS
22 LLC; JON FLEMING, individually and as an
23 agent of LAS VEGAS DEVELOPMENT
24 FUND LLC and EB5 IMPACT ADVISORS
25 LLC; LINDA STANWOOD, individually and
26 as Senior Vice President of LAS VEGAS
27 DEVELOPMENT FUND LLC and EB5
28 IMPACT ADVISORS LLC; DOES 1-
29 10, inclusive; and ROE CORPORATIONS 1-
30 10, inclusive,

31 Defendants.

CASE NO.: A-18-781084-B

DEPT NO.: 16

NOTICE OF ENTRY OF ORDER
SHORTENING TIME

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NOTICE OF ENTRY OF ORDER SHORTENING TIME

PLEASE TAKE NOTICE that an Order Shortening Time on Plaintiff's Motion to Seal and/or Redact Pleadings and Exhibits to Protect Confidential Information, Motion to Amend Paragraph 2.3 of Protective Order, Motion for Order Shortening Time and Order Shortening Time was entered by the Court in the above-captioned action on the 15th day of February, 2019, a true and correct copy of which is attached hereto.

DATED this 15TH day of February, 2019.

ALDRICH LAW FIRM, LTD.

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

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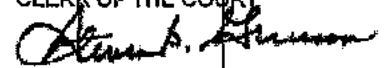
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of February, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER SHORTENING TIME** 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*

C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
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*

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



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

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

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

10 **Plaintiff,**

11 vs.

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

22 **Defendants.**

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


**MOTION TO SEAL AND/OR
REDACT PLEADINGS AND
EXHIBITS TO PROTECT
CONFIDENTIAL FINANCIAL
INFORMATION, MOTION TO
AMEND PARAGRAPH 2.3 OF
PROTECTIVE ORDER, MOTION
FOR ORDER SHORTENING TIME,
AND ORDER SHORTENING TIME**

DEPARTMENT XVI
NOTICE OF HEARING
DATE 2/20/19 TIME 9:00am
APPROVED BY CJ

1 This Motion is made and based upon the pleadings and papers on file herein, the
2 following Points and Authorities, the Declaration of John P. Aldrich, Esq., and any attached
3 exhibits.

4 DATED this 12 day of February, 2019.

5 ALDRICH LAW FIRM, LTD.

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

12 **DECLARATION OF JOHN P. ALDRICH IN SUPPORT OF MOTION TO SEAL AND**
13 **REDACT, MOTION TO AMEND PROTECTIVE ORDER, AND MOTION FOR ORDER**
14 **SHORTENING TIME**

14 State of Nevada)
15) ss
16 County of Clark)

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

- 18 1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and
19 am a partner in the law firm of Aldrich Law Firm, Ltd. I am counsel for Plaintiff in this action.
- 20 2. My office address is 7866 West Sahara Avenue, Las Vegas, Nevada 89117.
- 21 3. The following facts set forth in this Affidavit are true and correct to the best of my
22 knowledge, or where stated, are upon information and belief. I make this Declaration based on
23 my personal knowledge of the facts and matters of this action, and to establish good cause
24 justifying a shortening of time for the hearings on Plaintiff's Motion to Seal and/or Redact

1 Pleadings and Exhibits to Protect Confidential Financial Information and Motion to Amend
2 Paragraph 2.3 of Protective Order.

3 4. There exists good cause to hear Plaintiff's Motion to Seal and/or Redact Pleadings
4 and Exhibits to Protect Confidential Financial Information and Motion to Amend Paragraph 2.3
5 of Protective Order on shortened time.

6 5. Plaintiff is a privately-held LLC, with a business model that is unique. Plaintiff
7 has provided thousands of pages of private, confidential, proprietary information to Defendants.
8 As explained herein, Defendants have disclosed confidential financial information in the form of
9 parts of Plaintiff's tax returns, as well as making comments about the contents of Plaintiff's tax
10 returns in pleadings and/or Declarations.

11 6. As has been explained in prior pleadings, as well as below, Defendants have a
12 confidential relationship with Plaintiff. The tax return information was identified as confidential
13 in Plaintiff's Motion for Protective Order, and specifically described therein. Defendants'
14 counsel, Keith Greer, Esq., acknowledged the confidentiality of exactly the information
15 Defendants disclosed at a hearing on December 5, 2019. (See page 23 of the Transcript from the
16 December 5, 2018 hearing, which is not attached here because it has been deemed confidential.)
17 Exhibits 6 and 7 of Robert Dziubla's Declaration should have been filed under seal and all
18 references to confidential protected information should have been redacted in the first place.
19 Plaintiff's tax return information has now been placed in the public domain and must be sealed
20 and removed from the public domain, and all references thereto redacted, so as to protect this
21 confidential proprietary information. This is of the utmost importance to Plaintiff, and must be
22 heard on an order shortening time.

1 7. Upon receipt of the pleadings disclosing the confidential tax information, I
2 demanded that Defendants immediately take steps to have Plaintiff's tax return information
3 removed from the public domain and seal those exhibits, as well as redact or seal any comments
4 related to those exhibits in the pleadings. Despite Mr. Greer's prior acknowledgement of the
5 protective order and this precise information's protection thereunder, Defendants, through
6 counsel, have refused to do so, citing paragraph 2.3 of the Protective Order that was previously
7 entered. (See E-mail exchange between John P. Aldrich, Esq. and Keith Greer, Esq., dated
8 February 7, 2019 and attached hereto as Exhibit 1.) The Protective Order was entered to protect
9 exactly this type of information, as explained therein. The Motion for Protective Order was not
10 opposed by Defendants.

11 8. Mr. Greer and I also had a telephone conference on Thursday, February 7, 2019,
12 during which Mr. Greer stated he would get back to me by Friday, February 8, 2019 and advise
13 if Defendants would stipulate to seal and/or redact the information identified by Plaintiff. Mr.
14 Greer eventually responded on Monday, February 11, 2019, again claiming that paragraph 2.3 of
15 the Protective Order justifies Defendants' bad faith actions. (E-mail from Keith Greer, Esq., to
16 John P. Aldrich dated February 11, 2019, attached hereto as Exhibit 2.)

17 9. Plaintiff respectfully requests that the Court hear this matter as soon as possible.
18 The next hearing scheduled in this case is on February 28, 2019 on the following matters: (1)
19 Motion to Compel and for Sanctions; (2) Defendants' Counter-Motion for Relief from the
20 November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting of Defendant
21 EB5 Impact Advisors LLC; and (3) Defendant Las Vegas Development Fund LLC's Motion for
22 Appointment of Receiver and Request for Order Shortening Time. These items must be sealed
23 and/or redacted immediately. Plaintiff cannot wait until either the ordinary course setting or the
24

1 next hearing on February 28, 2019. Plaintiff respectfully requests that this matter be heard as
2 soon as possible.

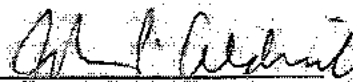
3 10. There is a compelling privacy or safety interest that outweighs the public interest
4 in access to the court record. Plaintiff is seeking to protect proprietary business information
5 related to its business operations. This information at issue in this motion relates to Plaintiff's
6 tax returns. Plaintiff and Defendants must protect the public disclosure of the confidential,
7 proprietary information.

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

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

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

14 DATED this 12 day of February, 2019.

15 
16 John P. Aldrich, Esq.
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ORDER SHORTENING TIME

Good cause appearing therefore,

IT IS HEREBY ORDERED that the time for the hearing on Plaintiff's Motion to Seal and/or Redact Pleadings and Exhibits to Protect Confidential Financial Information and Motion to Amend Paragraph 2.3 of Protective Order in the above-entitled matter be shortened, and the same will be heard on the 20 day of February, 2019, at the hour of 9:00: am a.m. in Dept. 16 of the Eighth Judicial District Court.

DATED this 14 day of February, 2019.


DISTRICT COURT JUDGE

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

Despite the fact that this case is still in the initial pleadings stage, it already has a somewhat tortured history. The Court is well aware of the many motions and hearings that have already occurred, so Plaintiff will not recite the procedural history here except as pertinent for the instant motion. There are a plethora of other motions pending which the Court will hear over the next few weeks.

On February 6, 2019, Defendants filed a Motion for Appointment of Receiver. Defendants have attached portions of Front Sight's tax returns and placed that information in the public domain. (See Exhibits 6 and 7 to Robert Dziubla's Declaration in Support of Motion for Appointment of Receiver.) Defendants have also made reference to the tax return information in

1 its Motion for Appointment of Receiver. Defendants are in violation of the Protective Order that
2 was entered by the Court, Mr. Greer having already acknowledged in open court that this exact
3 information was subject to the Protective Order, as well as the general public policy and duty to
4 keep tax returns and other private financial information out of the public domain. Additionally,
5 Defendants have a confidential relationship with Plaintiff and have a duty to keep Plaintiff's tax
6 returns and other private information private and not file them in the public domain. Defendant
7 LVDF, as a lender, also has a duty to keep those records private. Defendants have clearly acted
8 in bad faith in an effort to cause harm to Plaintiff and its principal, Dr. Ignatius Piazza.

9 Plaintiff demanded that Defendants immediately take steps to have Plaintiff's tax return
10 information removed from the public domain and seal those exhibits, as well as redact or seal
11 any comments related to those exhibits in the pleadings. Defendants, through counsel, have
12 refused to do so. (See E-mail exchange between John P. Aldrich, Esq. and Keith Greer, Esq.,
13 dated February 7, 2019 and attached hereto as Exhibit 1 and Declaration of John P. Aldrich,
14 above.) Mr. Aldrich and Mr. Greer also had a telephone conference on Thursday, February 7,
15 2019, during which Mr. Greer stated he would get back to Mr. Aldrich by Friday, February 8,
16 2019 and advise if Defendants would stipulate to seal and/or redact the information identified by
17 Plaintiff. Mr. Greer eventually responded on Monday, February 11, 2019, again claiming that
18 paragraph 2.3 of the Protective Order protects Defendants' bad faith actions. (E-mail from Keith
19 Greer, Esq., to John P. Aldrich dated February 11, 2019, attached hereto as Exhibit 2.)
20 Defendants' continued refusal to remedy the blatant disclosure of confidential information has
21 necessitated the filing of this Motion.

22 Previously, on October 4, 2018, Plaintiff filed a Motion for Protective Order. Besides the
23 fact that one of Defendants is a lender and had an independent duty to keep Plaintiff's
24

1 confidential financial information private, the Defendants collectively have a confidential
2 relationship that requires them to keep Plaintiff's tax information confidential. Defendants have
3 long been on notice that Plaintiff identified these records as confidential because Plaintiff
4 described those records in its Motion for Protective Order. On page 16 of the Motion for
5 Protective Order, Plaintiff stated the following:

6 Plaintiff is seeking to protect proprietary business information related to its
7 project. This information contains various types of confidential and proprietary
8 information, including plans for its project, projections, financial information, or
9 references to this type of information. Plaintiff has provided literally thousands of
10 pages of confidential financial information, including taxes, bank accounts, etc.,
11 to Defendants. Defendants have also provided information that includes trade
12 secrets and information about how Plaintiff's business is run and the like.

13 Plaintiff seeks to preclude Defendants (or any party to the litigation) from
14 disclosing confidential, proprietary, trade secret, or other similar protected
15 information. Any pleadings or exhibits containing such information should be
16 sealed and protected from disclosure.

17 Defendants did not oppose that motion and a protective order was entered on November
18 27, 2018. Mr. Greer acknowledged the applicability of the protective order at the hearing on
19 December 5, 2018. (See page 23 of the Transcript from the December 5, 2018 hearing, not
20 attached because confidential.)

21 Consistent with the Motion, paragraph 1.2 of the Protective Order identifies financial
22 records (which certainly include tax returns) as confidential. Paragraph 2.3 does not absolve
23 Defendants of their duties under the Protective Order or the law. More specifically, paragraph
24 2.3 provides, in pertinent part, that "Material that was in the hands of the Receiving Party [i.e.,
Defendants] prior to disclosure in this action and that was subject to a confidentiality obligation
between the Parties shall be made subject to this Order." Moreover, Defendants have the duty to
prove the information "was not subject to a confidentiality obligation or was public knowledge,"
which it cannot do. Defendants collectively have violated the duties of their confidential

1 relationship, not to mention in violation of long-standing public policy that tax returns remain
2 private. Defendants LVDF and Dziubla are in violation of their duties as a lender. These blatant
3 violations of the Court's Protective Order must be remedied immediately.

4 Due to Defendants' refusal to remedy their bad faith conduct, Plaintiff respectfully moves
5 this Court for the following relief:

- 6 1. For an Order sealing Exhibits 6 and 7 of the Declaration of Robert Dziubla;
- 7 2. For an Order redacting paragraph 19 of the Declaration of Robert Dziubla; and
- 8 3. For an Order redacting the following from Defendants' Motion for Appointment
9 of Receiver:

- 10 a. Page 11, line 18, starting with "to wit:" through page 12, line one ending
11 with "Project;"
- 12 b. Footnote 8 on page 11; and
- 13 c. Page 25, line 11 starting with "The present" through line 17 "must stop."

14 This must be done immediately and the exhibits and information referenced must be
15 sealed immediately.

16 Further, Plaintiff moves to revise and amend paragraph 2.3 to add the following phrase to
17 the end: "All Material fitting the description of "confidential information" as set forth in
18 paragraph 1.2 of this Protective Order that has been provided to any Defendant by Plaintiff, at
19 any time, is subject to confidentiality obligations, and to the extent any party wishes to file such
20 confidential information with a motion, that party must first apply for a sealing order."

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II.

LEGAL ARGUMENT

A. THE COURT SHOULD SEAL EXHIBITS 6 AND 7 TO ROBERT DZIUBLA'S DECLARATION AND REDACT PORTIONS OF THE PLEADINGS THAT DISCLOSE CONFIDENTIAL INFORMATION

Nevada Supreme Court Rules, Part VII, pertain to the sealing and redacting Court records. Pursuant to Rule 3(4):

The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. The parties' agreement alone does not constitute a sufficient basis for the court to seal or redact court records. . .

Rule 3(4) also sets forth eight specific instances that warrant the sealing of records:

(b) The sealing or redaction furthers an order entered under NRCF 12(f) or JCRCP 12(f) or a protective order entered under NRCF 26(c) or JCRCP 12(c);

....

(g) The sealing or redaction is necessary to protect intellectual proprietary or property interests such as trade secrets as defined in NRS 600A.030(5);

(h) The sealing or redaction is justified or required by another identified compelling circumstance.

Rule 3(4)(h), cited above, provides a catch-all provision, which allows the sealing of court records that is required by a compelling circumstance. Plaintiff is seeking an order to seal Exhibits 6 and 7 and to redact portions of the pleadings, as set forth herein.

Finally, Rule 3(1) requires that a request to seal records must be in writing, must disclose in the document caption that it is a request to seal records, and must be served on all parties to the lawsuit. Plaintiff will serve the Motion to Seal and/or Redact Pleadings and Exhibits to Protect Confidential Financial Information and Motion to Amend Paragraph 2.3 of Protective

1 Order on all Defendants through their counsel. Plaintiff respectfully moves this court for the
2 following relief:

- 3 1. For an Order sealing Exhibits 6 and 7 of the Declaration of Robert Dziubla;
- 4 2. For an Order redacting paragraph 19 of the Declaration of Robert Dziubla; and
- 5 3. For an Order redacting the following from Defendants' Motion for Appointment of
6 Receiver:

7 a. Page 11, line 18, starting with "to wit:" through page 12, line one ending with
8 "Project;"

9 b. Footnote 8 on page 11; and

10 c. Page 25, line 11 starting with "The present" through line 17 "must stop."

11 **B. THERE IS A FIDUCIARY RELATIONSHIP BETWEEN PLAINTIFF AND**
12 **DEFENDANTS**

13 Defendants have argued that the relationship between Plaintiff and Defendants is nothing
14 more than lender and borrower and that a relationship of lender and borrower does not support a
15 finding of special trust under Nevada law. *Giles. Gen. Motors Acceptance Corp.*, 494 F.3d 865,
16 882 (9th Cir. 2007). While Defendants would like the Court to believe the relationship between
17 Plaintiff and Defendants is nothing more than lender and borrower, in actuality the relationship is
18 a confidential relationship characterized by special trust.

19 Under Nevada law, a fiduciary relationship exists when one party is bound to act for the
20 benefit of the other party. "Such a relationship imposes a duty of the utmost good faith."
21 *Hoopes v. Hammargren*, 102 Nev. 425, 725 P.2d 238, 242 (1986). "The essence of a fiduciary
22 or confidential relationship is that the parties do not deal on equal terms, since the person in
23 whom trust and confidence is in a superior position to exert unique influence..." *Powers v.*
24 *United Servs. Auto Ass'n*, 115 Nev. 38, 979 P.2d 1286, 1288 (1999). Nevada law recognizes a

1 duty owed in “confidential relationships” where “one party gains the confidence of the other and
2 purports to act or advise with the other’s interests in mind.” *Perry v. Jordan*, 111 Nev. 943, 900
3 P.2d 335, 338 (1995) (emphasis added). The duty owed is akin to a fiduciary duty. “When a
4 confidential relationship exists, the person in whom the special trust is placed owes a duty to the
5 other party similar to the duty of a fiduciary, requiring the person to act in good faith and with
6 due regard to the interests of the other party.” *Id.*

7 In the instant matter, the relationship between Plaintiff and Defendants is much more than
8 that of lender and borrower. Defendants have a fiduciary responsibility to Front Sight, due to the
9 special relationship of trust between Front Sight and Defendants. Plaintiff advanced over
10 \$444,000 in marketing fees to Defendants. Lenders do not charge marketing fees. They loan
11 money. Now, contrary to Defendants’ repeated assertions, Plaintiff has proven that Defendants
12 Dziubla (as agent of Las Vegas Development Fund) and Las Vegas Development Fund, LLC
13 have accepted money from Plaintiff that was earmarked for marketing purposes.

14 Moreover, on or about November 30, 2018, Defendant EB5 Impact Advisors LLC
15 produced some documents related to Defendant’s expenditures of Plaintiff’s funds. However,
16 the documents provided by Defendant fall woefully short of the information and documentation
17 Defendant EB5IA was required to produce pursuant to the Court’s Order. Defendant provided
18 copies of some checks and bank statements for EB5 Impact Advisors LLC. The checks show a
19 plethora of what appear to be inappropriate expenditures, including for example:

- 20 • Payment of rent for a location in Nevada and California for an unrelated company
21 separately owned by Defendant Jon Fleming.
- 22 • “Distributions” to an entity that appears to be owned Defendant Jon Fleming.
- 23 • “Consulting” fees paid to a company owned by Robert Dziubla.

1 • A substantial amount of money paid out in attorney's fees. It is difficult to come
2 up with a justification as to how attorney's fees for marketing could reach the amount paid,
3 particularly when Plaintiff paid for the formation of EB5IC.

4 • Tens of thousands of dollars paid to unidentified persons or entities.

5 • Numerous transactions for what appear to be personal expenses of the
6 Defendants, for things such as bar dues, Starbucks, Sharp Healthcare, Discount Tire, smog
7 checks for vehicles, carwashes, restaurants, Costco, gas and fees for a speeding ticket.

8 Conspicuously absent are any invoices or receipts related to the expenditures. There are
9 no invoices provided for any of these expenditures, making it difficult, if not impossible, to
10 ascertain how these expenses could be justifiable marketing expenses.

11 Defendant EB5IA, and Defendant Dziubla, who runs that entity, have provided only a
12 fraction of the documents they were ordered to provide by the Court on. Defendants' failure to
13 abide by this Court's order is addressed in a Motion to Compel that is set to be heard on
14 February 28, 2019.

15 Moreover, Defendants made multiple repeated fraudulent misrepresentations to induce
16 Plaintiff to finance its project with Defendants, as well as providing false updates after the
17 relationship began. (Sec. Am. Compl. ¶¶11-73.) Defendants are much more than just a lender.

18 **C. PLAINTIFF'S TAX RETURNS MUST BE SEALED AND ANY REFERENCE TO**
19 **INFORMATION IN THE TAX RETURNS AND/OR CONFIDENTIAL**
20 **FINANCIAL INFORMATION MUST BE REDACTED**

21 There is a compelling privacy or safety interest that outweighs the public interest in
22 access to the court record. Indeed, Defendants should never have filed any portion of Plaintiff's
23 tax returns. The tax returns must be sealed and any information mentioned in the pleadings must
24 be redacted.

1 Tax records and other financial information are protected. Indeed, in discovery, a party
2 must show a compelling need for tax returns and other financial information; otherwise, that
3 discovery is not allowed. See, e.g., *Klein v. Freedom Strategic Partners, LLC*, 2009 U.S. Dist.
4 LEXIS 52241 (D. Nev.) (“Although Nevada law does not recognize a *privilege* with respect to
5 tax returns, the Nevada Supreme Court has recognized limitations on the discovery of
6 information contained in tax returns to avoid an invasion into the litigant’s private affairs....”
7 (emphasis added)); *Schlatter v. Eighth Jud. Dist. Ct.*, 99 Nev. 189, 561 P.2d 1342 (1977)
8 (disclosure of matter contained in tax records may not be required in the absence of a showing
9 that the information is otherwise unobtainable” and “carte blanche discovery of financial
10 information is an excessive invasion of privacy interest”). Controlling the disclosure of private
11 financial information is of the utmost importance because the improper disclosure of financial
12 material “is irretrievable once made.” *Id.* Those rules and policies also apply to this situation,
13 where a lender has received confidential financial and tax information at part of a loan
14 application.

15 Just because a borrower has provided tax and other financial information as part of the
16 loan application process does not mean that a borrower has waived its privacy rights and the
17 lender can publish it to the world. Although discussed in the context where a statutory privilege
18 for tax returns applies, the reasoning set forth by the Court of Appeals of California is instructive
19 as to Plaintiff’s privacy rights and expectation of privacy in this instance. The Court of Appeals
20 for California explained:

21 Neither the parties nor we have found any reported cases in which a
22 waiver has been based upon a party’s submission of his or her tax returns to a
23 bank as part of a loan application....

24 A bank customer reasonably expects the bank to maintain the
confidentiality of private financial matters....While there is no “bank-customer

1 privilege akin to the lawyer-client privilege” or other statutory privileges,
2 confidential information given to a bank by its customers is protected by the right
3 to privacy that became a part of the California Constitution after the judicial
4 formulation of the tax-return privilege....

5 Thus, there is a right to privacy in confidential customer information
6 whatever form it takes, whether that form be tax returns, checks, statements, or
7 other account information....

8 *Fortunato v. Superior Court*, 114 Cal. App. 4th 475, 480-81 (2003)(internal citations omitted).

9 Even when there is not a statutory tax return privilege, many courts have recognized that
10 tax returns are treated differently than other types of financial records. For example, in *In re*
11 *Beeson*, while also noting that “privacy once broken...cannot be retrieved,” the Court of Appeals
12 of Texas explained:

13 Tax returns are treated differently than other types of financial records, as
14 evidenced by the supreme court’s expressed “reluctance to allow uncontrolled and
15 unnecessary discovery of federal income tax returns.” ... This is because federal
16 income tax returns are considered private and the protection of that privacy is of
17 constitutional importance.

18 *In re Beeson*, 378 S.W. 3d 8, 12 (Tex. Ct. App. 2011)(internal quotations omitted). Similarly, in
19 *Hollinger Int’l, Inc. v. Hollinger, Inc.*, 2005 U.S. Dist. LEXIS 30420 (N.D. Ill. 2005), the
20 Northern District of Illinois found “good cause for prohibiting the public disclosure of the
21 individual Defendants’ tax returns in court filings....” and specifically noted “the public has a
22 strong interest in ensuring the privacy of taxpayers’ returns.” *Id.* at *14. The Court of Appeals
23 of California adopted a similar approach and explained the rationale as follows:

24 Even if confidential customer information is not “wholly privileged [or]
insulated from scrutiny by civil litigants,” a court faced with a motion for
protective order should carefully balance “the right of civil litigants to discover
relevant facts, on the one hand, with the right of bank customers to maintain
reasonable privacy regarding their financial affairs, on the other hand.

Fortunato, 114 Cal. App. 4th at 481.

1 Despite the fact that Mr. Greer had acknowledged Defendants' duty not to disclose this
2 exact information because of the Protective Order at the December 5, 2018 hearing, Defendants
3 invoked paragraph 2.3 as the basis for Defendants to blatantly breach their duties to Plaintiff and
4 disclose Plaintiff's tax return information, presumably claiming that because the information was
5 provided before the entry of the Protective Order, they had no duty to protect Plaintiff's tax
6 returns from disclosure. This, however, is incorrect.

7 The court in *Fortunato* continued:

8 More compelling, however, is the absence of a truly *voluntary*
9 relinquishment.... "[F]or all practical purposes, the disclosure by individuals or
10 business firms of their financial affairs to a bank is not entirely volitional, since it
11 is impossible to participate in the economic life of contemporary society without
12 maintaining a bank account"... Nor do we view compliance with a bank's
13 requirement of submitting tax returns with a loan application to be an entirely
14 voluntary relinquishment, since that, too, is a fact of economic life, to which any
15 home or business owner can attest."

16 The waiver of both privileges and the constitutional right to privacy "must
17 be narrowly rather than expansively construed," in order to protect the purposes
18 of the privilege or right.

19 *Forunato*, 114 Cal. App. 4th at 481-82 (emphasis in original; internal citations omitted). See
20 also, *Bank of America, N.A. v. Hensley Props., L.P.*, 2008 U.S. Dist. LEXIS 111541 (E.D. Cal.
21 July 10, 2008)("while [borrowers] voluntarily gave their tax returns to [lender], they have not
22 relinquished them for publication to the world at large.... Accordingly, recognizing the strong
23 privacy rights attached to tax returns, the court orders [lender] not to disclose those documents to
24 third parties, and to the extent it wishes to file them with a motion, to first apply for a sealing
order").

"While [Nevada] does not recognize a privilege for tax returns...public policy suggests
that tax returns or financial status not be had for the mere asking." *Hetter v. Dist. Ct.*, 110 Nev.
513, 520, 874 P.2d 762, 766 (1994). Even if its tax returns are not privileged, Plaintiff has not

1 relinquished its privacy rights to its tax returns or other financial information. Plaintiff has not
2 relinquished its privacy rights to any of the information it gave to Defendants in anticipation of
3 the \$75 million loan they were promised – of which less than 10% was delivered.

4 Given the allegations spelled out in great detail in the Second Amended Complaint, it is
5 apparent that Defendants obtained Plaintiff's extensive financial information – including its tax
6 returns – under false pretenses. By attaching Plaintiff's tax returns to a pleading and publishing
7 them to the world, Defendants have shown the Court and the world that they are not trustworthy.
8 Plaintiff's tax information must be sealed and any references thereto in the pleadings redacted.

9 Plaintiff seeks to protect proprietary business information related to its project. This
10 information contains various types of confidential and proprietary information, including plans
11 for its project, projections, and financial information, and references to such information.
12 Accordingly, sealing the financial documents would protect against the disclosure of proprietary
13 and/or confidential business information.

14 **D. IN THE EVENT THE COURT FINDS THE PROTECTIVE ORDER TO BE**
15 **AMBIGUOUS, THE PROTECTIVE ORDER SHOULD BE AMENDED**

16 Further, Plaintiff moves to revise and amend paragraph 2.3 to add the following phrase to
17 the end: "All Material fitting the description of "confidential information" as set forth in
18 paragraph 1.2 of this Protective Order that has been provided to any Defendant by Plaintiff, at
19 any time, is subject to confidentiality obligations under this Protective Order, and to the extent
20 any party wishes to file such confidential information with a motion, that party must first apply
21 for a sealing order."

22 NRCP 26(c) provides that:

23 [u]pon motion by a party or by the person from whom discovery is sought,
24 accompanied by a certification that the movant has in good faith conferred or
attempted to confer with the other affected parties in an effort to resolve the

1 dispute without court action, and for good cause shown, the court in which the
2 action is pending may make any order which justice requires to protect a party or
3 person from annoyance, embarrassment, oppression, or undue burden or expense,
4 including ... (4) that certain matters not be inquired into, or that the scope of the
5 discovery be limited to certain matters ... (7) that a trade secret or other
6 confidential research, development, or commercial information not be revealed or
7 be revealed only in a designated way;[.]

8 The Court has already granted and entered a Protective Order. Plaintiff simply asks to
9 amend it to even further clarify for Defendants what their duties are with respect to protecting
10 Plaintiff's financial and business information.

11 **E. PLAINTIFF'S MOTION SHOULD BE HEARD ON SHORTENED TIME**

12 EDCR 2.26 states in pertinent part:

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

20 As set forth above, Plaintiff is a privately-held LLC, with a business model that is unique.
21 Plaintiff has provided thousands of pages of private, confidential, proprietary information to
22 Defendants. As explained herein, Defendants have disclosed confidential financial information
23 in the form of parts of Plaintiff's tax returns. This information was identified as confidential in
24 Plaintiff's Motion for Protective Order, and specifically described therein, and Defendants'
counsel, Mr. Greer, previously acknowledged the applicability of the Protective Order at the
December 5, 2018 hearing. Exhibits 6 and 7 of Robert Dziubla's Declaration should have been
filed under seal and all references to confidential protected information redacted in the first
place. Plaintiff's tax return information has now been placed in the public domain and must be
sealed and removed from the public domain, and all references thereto redacted, so as to protect

1 this confidential proprietary information. This is of the utmost importance to Plaintiff, and must
2 be heard on an order shortening time.

3 Upon receipt of the pleadings disclosing the confidential tax information, undersigned
4 counsel demanded that Defendants immediately take steps to have Plaintiff's tax return
5 information removed from the public domain and seal those exhibits, as well as redact or seal
6 any comments related to those exhibits in the pleadings. Defendants, through counsel, have
7 refused to do so, citing paragraph 2.3 of the Protective Order that was previously entered.
8 (Exhibit 1.) The intent of the Protective Order was to protect exactly this type of information, as
9 explained therein. The Motion for Protective Order was not opposed.

10 Counsel also had a telephone conference on Thursday, February 7, 2019, during which
11 Mr. Greer stated he would get back to me by Friday, February 8, 2019 and advise if Defendants
12 would stipulate to seal and/or redact the information identified by Plaintiff. Mr. Greer eventually
13 responded on Monday, February 11, 2019, again claiming that paragraph 2.3 of the Protective
14 Order justifies Defendants' bad faith actions. (Exhibit 2.)

15 Plaintiff respectfully requests that the Court hear this matter as soon as possible. The
16 next hearing scheduled in this case is on February 28, 2019 on the following matters: (1)
17 Motion to Compel and for Sanctions; (2) Defendants' Counter-Motion for Relief from the
18 November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting of Defendant
19 EB5 Impact Advisors LLC; and (3) Defendant Las Vegas Development Fund LLC's Motion for
20 Appointment of Receiver and Request for Order Shortening Time.

21 There is a compelling privacy interest that outweighs the public interest in access to the
22 court record. Plaintiff is seeking to protect proprietary business information related to its
23
24

1 business operations. This information at issue in this motion relates to Plaintiff's tax returns.
2 Plaintiff must protect the public disclosure of the confidential, proprietary information.

3 These items must be sealed and/or redacted immediately. Plaintiff cannot wait until
4 either the ordinary course setting or the next hearing on February 28, 2019. Plaintiff respectfully
5 requests that this matter be heard as soon as possible.

6 Based on the foregoing, Plaintiff respectfully requests that its Plaintiff's Motion to Seal
7 and/or Redact Pleadings and Exhibits to Protect Confidential Financial Information and Motion
8 to Amend Paragraph 2.3 of Protective Order be heard on shortened time.

9 **III.**

10 **CONCLUSION**

11 Based upon the above, Plaintiff respectfully requests that the Court grants its Motion to
12 Seal and/or Redact Pleadings and Exhibits to Protect Confidential Financial Information and
13 Motion to Amend Paragraph 2.3 of Protective Order, as requested herein.

14 DATED this 12 day of February, 2019.

15 **ALDRICH LAW FIRM, LTD.**


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

EXHIBIT 1

EXHIBIT 1

From: John Aldrich
To: "Keith Greer"
Cc: kholbert@farmerscase.com; traci@johnaldrichlawfirm.com; "Cathy Hernandez"
Subject: RE: Violation of Protective Order
Date: Thursday, February 7, 2019 5:00:37 PM

Keith,

Clearly the intention of the protective order, as explained in the Motion, was to protect exactly this type of information. Are you taking the position that your clients had no obligation of confidentiality related to this information?

Or can we just agree that those items be sealed and redacted and I will circulate a stipulation?

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

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From: Keith Greer [mailto:keith.greer@greerlaw.biz]
Sent: Thursday, February 7, 2019 4:54 PM
To: John Aldrich
Cc: kholbert@farmerscase.com; traci@johnaldrichlawfirm.com; Cathy Hernandez
Subject: Re: Violation of Protective Order

Please refer to Section 2.3 of the Protective Order.

Sent from my iPhone

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

Ph (858)613-6677
Fax (858)613-6680

On Feb 7, 2019, at 4:02 PM, John Aldrich <jaldrich@johnaldrichlawfirm.com> wrote:

Keith and Kathryn,

I am in receipt of the Motion for Appointment of Receiver that was filed yesterday. You and Defendants are in violation of the Protective Order that was ordered by the Court. You have attached financial documents of Front Sight and placed that information in the public domain, specifically, Exhibits 6 and 7 to Mr. Dziubla's Declaration. We hereby demand that you immediately take steps to have that removed from the public domain and seal those exhibits, as well as redact or seal any comments related to those exhibits in the pleadings. This must be done **immediately**.

Paragraph 1.2 of the Protective Order identifies financial records as confidential. Further, you have long been on notice that we identified these records as confidential because we described those records in our Motion for Protective Order, which you and Defendants did not oppose. On page 16 of the Motion, we stated the following:

Plaintiff is seeking to protect proprietary business information related to its project. This information contains various types of confidential and proprietary information, including plans for its project, projections, financial information, or references to this type of information. Plaintiff has provided literally thousands of pages of confidential financial information, including taxes, bank accounts, etc., to Defendants. Defendants have also provided information that includes trade secrets and information about how Plaintiff's business is run and the like.

Plaintiff seeks to preclude Defendants (or any party to the litigation) from disclosing confidential, proprietary, trade secret, or other similar protected information. Any pleadings or exhibits containing such information should be sealed and protected from disclosure.

To the extent that you may now claim you were unaware that Front Sight's financial records are confidential, we again reiterate that all financial documents that any Defendant has received related to the loan at issue in this case are confidential.

Please advise immediately what steps you will take to have these documents removed from the public domain by the close of business tomorrow. Alternatively, if you will agree to sign a stipulation that the court seal and/or redact the confidential information, I will prepare a stipulation and circulate it for signature tomorrow morning.

I await your immediate response.

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
jaldrich@johnaldrichlawfirm.com
Tel (702) 853-5490

Fax (702) 227-1975

Visit us online at <http://www.johnaldrichlawfirm.com>

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EXHIBIT 2

EXHIBIT 2

From: Keith Greer
To: John Aldrich; Kathryn Hobert
Subject: Protective Order
Date: Monday, February 11, 2019 11:46:23 AM

Dear Mr. Aldrich:

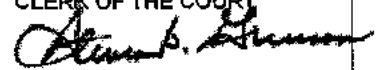
Please be advised that we will not be able to stipulate to sealing the minimal financial information that we disclosed in our motion for receivership. We based our non-opposition of Plaintiff's motion for protective order on our determination that the proposed order was reasonable and fair. And Section 2.3 of the Protective Order makes it clear that documents already in the presenting party's possession are not subject to the Protective Order, unless they are subject to a pre-existing confidentiality agreement. We were unable to identify any such pre-existing document, and thus did not feel constrained by the Protective Order. That said, you will note that we endeavored to redact all unnecessary information.

I apologize for not getting back to you last week. Please let me know if you are able to identify a pre-existing confidentiality agreement that would impact our assessment of this issue.

Hoc Securior,

C. Keith Greer, Esq.
Law offices of Greer & Associates, APC
17150 Via del Campo, Suite 100
San Diego, CA 92127
Phone (858)613-6677
Cell (858)361-4640
Fax (858)613-6680

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

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

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

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

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

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

**OPPOSITION MEMORANDUM OF
DEFENDANT LAS VEGAS
DEVELOPMENT FUND, LLC, TO
PLAINTIFF'S MOTION TO SEAL
AND/OR REDACT PLEADINGS AND
EXHIBITS**

Date: February 20, 2019
Time: 9:00 a.m.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS AND SUMMARY OF ARGUMENT**

3 Defendant Las Vegas Development Fund, LLC ("LVD Fund") loaned \$6,375,000 to
4 Plaintiff Front Sight Management, Inc. ("Front Sight") for purposes of constructing a resort
5 property according to plans that were approved by the United State Customs and Immigration
6 Service ("USCIS") pursuant to the EB-5 Immigrant Investor Program. Front Sight is in default on
7 the loan and LVD Fund has recorded a Notice of Default with the Nye County Recorder. LVD
8 Fund's Motion for Appointment of a Receiver is set to be heard in this Court on February 28,
9 2019.

10 The Receivership Motion is based in part on allegations that Front Sight's principal,
11 Ignatius Piazza ("Piazza"), has been looting Front Sight by diverting nearly \$10,000,000 per year
12 to his personal trust accounts, while feigning the lack of funds necessary to comply with the terms
13 of the Construction Loan Agreement ("CLA") and timely complete the EB-5 Project.

14 Specifically, Section 1.7(e) of the CLA provides that: "Borrower shall use the proceeds
15 of the Loan solely for the purpose of funding directly, or advancing to Affiliates to pay, the
16 costs of the Project, in accordance with the terms and conditions of this Agreement, as set forth
17 in the Budget and the Project documents submitted to, and approved by, USCIS."¹ However, in
18 its October 30, 2018 report to LVD Fund regarding EB-5 compliance,² Front Sight revealed that
19 although it has spent all of the \$6,375,000 in loan proceeds since the initial disbursement in
20 October 2016, less than \$2.7 million of the proceeds were actually spent on construction of the
21 EB-5 project. (Dziubla Decl. ¶ 19). Thus, more than \$3.675 million of EB-5 loan proceeds have
22 been diverted to fund matters that are not related to completion of the government approved
23

24 ¹A copy of the October 30, 2018 report from Front Sight is attached as Exhibit 3 of
25 the Declaration of Robert Dziubla in Support of Defendant's Motion to Appoint a Receiver ("Dziubla
Decl.").

26 ²See Dziubla Decl. Ex. 15, October 30, 2018 Report from Front Sight.
27
28

1 EB-5 plan, such as payment of Front Sight's general overhead expenses, thereby severely
2 prejudicing the EB-5 investors. (*Id.*)

3 In addition, while meretriciously asserting that the project has been languishing due to
4 an alleged lack of funds, Piazza diverted nearly \$11,000,000 in 2016, and more than \$7,000,000
5 in 2017, to his personal accounts, in addition to his six-figure salary. Assuming that his
6 withdrawals for 2018 are comparable, he will have diverted out of Front Sight, for his personal
7 benefit, enough capital to have completed the Front Sight Resort Project well within the time
8 constraints approved by the USCIS for the EB-5 investors.

9 To establish evidentiary support for these allegations, LVD Fund filed select pages of
10 Front Sight's tax returns, which were redacted such that the only discernable information was the
11 amount of money Piazza diverted for his personal benefit, and the huge amount of liability that
12 Piazza was heaping onto Front Sight through the "Front Sight Credits" marketing campaign. This
13 is clearly "relevant" evidence to support LVD Fund's allegations against Front Sight and in
14 support of its Motion for Appointment of a Receiver.

15 It is also important to note that throughout this litigation, Front Sight has been issuing
16 sales solicitations to the public entitled "Enemy Updates,"³ with comments like:

17 "In Enemy Update #2, I shared with you that the lying, Two Faced, Gun Grabbing,
18 Hillary Clinton Supporting Con Man evidently did not understand when the Court
19 makes a ruling so heavily in our favor, AT THE FIRST HEARING, the Judge is
20 sending a message that we will ultimately prevail in our lawsuit. I say the Con Man
21 must not have understood the strong message the Judge was sending him because,
22 believe it or not, he filed a Motion to Dismiss."

23 It did not take long for the Judge to deny the Con Man's Motion to Dismiss and
24 encouraged us to amend (strengthen) our complaint, now that we received [sic]
25 preliminary accounting that shows the Con Man could not account for about
26 \$200,000 of the hundreds of thousands of dollars we gave him to secure full
27 funding for our project."

28 By publishing these materials, Front Sight and Piazza makes this matter highly relevant to the

26 ³A highlighted copy of "Enemy Update #3" is attached as Exhibit D to the Declaration of C. Keith
27 Greer in Support of Defendant Las Vega Development Fund, LLC's Motion for Appointment of a
28 Receiver, filed Feb. 6, 2019.

1 public because it is portraying Front Sight as a cleanly run operation that is likely to prevail in
2 court, and needs money to do so. In reality, Front Sight is in default under the construction loan,
3 has mismanaged EB-5 loan funds, and the only reason it needs more money is because Piazza is
4 disregarding the company's financial obligations and moving nearly \$10,000,000 per year out of
5 the company and into his own pockets.

6
7 Front Sight's sales pitch follows with:

8 "Although we have already won MAJOR victories in this case, there is still much
9 to do to fully prosecute this case . . . I WOULD LIKE YOU to become one of
10 MY FRONT SIGHT WARRIORS and stand with me in this fight!"

11 Piazza then solicits money from the readers, and provides a further promise that:

12 "And as I have written several times in my e-mail correspondence with you, that
13 once the resort is complete, financially self-sufficient, self-sustaining, and running
14 like the well oiled machine you are accustomed to experiencing whenever you
15 attend a course at Front Sight, I will gently and generously turn the operation of
16 Front Sight over to you, my loyal and supportive members, so you and your
17 families can own and operate Front Sight for generations to come."

18 While Front Sight is touting its success in this Court and refuting its liability in marketing
19 materials designed to bilk more money from the public and Front Sight's 200,000 members, Front
20 Sight now brings this motion to seal the narrow portion of its financial information that LVD
21 Fund presented to this Court, in an effort to keep the public from learning about the fraudulent
22 scheme Piazza has been orchestrating for more than two decades. However, Front Sight's motion
23 should be denied because:

- 24 (1) Nevada does not recognize a "privilege" for tax returns;
- 25 (2) The tax returns are discoverable because they reflect relevant information regarding
26 the improper diversion of Front Sight's revenues to Piazza, and Front Sight failed to
27 meet its burden of showing that the information is available through alternative
28 means;
- (3) The Protective Order does not apply to documents already in a party's possession; and
- (4) Sealing the records and amending the Protective Order would violate public policy.

1 For each of these reasons, Front Sight's motion to seal and to amend the Protective Order should
2 be denied.

3 **II. ARGUMENT**

4 **A. Nevada does not recognize a "privilege" for tax returns.**

5 It is well established that tax returns are not "privileged" under Nevada law. *Hetter v.*
6 *Eighth Judicial Dist. Court in and for County of Clark*, 110 Nev. 513, 520 (1994); *McNair v*
7 *Eighth Judicial Dist. Court in and for County of Clark*, 110 Nev. 1285, 1289-90. Rather the test
8 is whether they are relevant. *Hetter*, 110 Nev. at 520; *McNair*, 110 Nev. at 1290. Accordingly,
9 Front Sight can not assert that the tax returns are privileged.

10 **B. The tax returns are discoverable because they reflect relevant information**
11 **and Front Sight has not shown the information is readily available through**
alternative means.

12 One of the primary bases upon which LVD Fund is moving for a receivership is that
13 Piazza has been diverting tens of millions of dollars out of Front Sight that should have been used
14 to complete the EB-5 construction project, and he is using EB-5 loan proceeds to pay Front
15 Sight's operating costs and pre-existing debt service with EB-5 loan proceeds. Evidence showing
16 the amount of money Piazza is diverting from Front Sight is therefore very "relevant" to these
17 proceedings. Accordingly, the tax returns are relevant and discoverable.

18 Although the the party seeking the production has the burden of showing relevance, "once
19 that burden is met, the burden shifts to the party opposing production to show that other sources
20 exist from which the information is readily obtainable." *Copper Sands Homeowners Ass'n v*
21 *Copper Sands Realty, LLC*, 2012 WL 1080291. Here, Front Sight has not made any showing that
22 the relevant financial information contained in the disclosed portion of its tax returns is "readily
23 obtainable." Accordingly, it has not met its burden and the motion must fail.

24 **C. The Protective Order does not apply to documents already in a party's**
25 **possession.**

26 Section 2.3 of the Court approved Protective Order provides in pertinent that: "The
27 protections of this Order shall not apply to Material that, prior to *disclosure in this action*, was
28

1 within the actual possession or knowledge of a Receiving Party but was not subject to any
2 confidentiality obligation between the Parties . . .” Here, the tax returns in question were already
3 in LVD Fund’s possession. Moreover, Front Sight has not, and can not, identify any non-
4 disclosure agreement between the parties (although as a sophisticated businessman Piazza could
5 have easily required one). Therefore, Front Sight can not conceal the information from the public
6 based on the Protective Order.

7 In light of there not being an express confidentiality agreement between the parties, Front
8 Sight again argues that LVD Fund has a “fiduciary” relationship with Front Sight that somehow
9 cloaks the documents in confidentiality. However, although the Nevada Supreme Court has held
10 that fiduciary duties arise as a matter of law in certain categories of relationships,⁴ none of those
11 relationships are present here. Moreover, the Nevada Supreme Court has expressly held that there
12 is no fiduciary relationship as a matter of law between a lender and a borrower. *Giles v. GMAC*,
13 494 F.3d 865, 882 (9th Cir.2007).

14 In support of its argument that a fiduciary relationship exists, Plaintiff cites *Hoops v.*
15 *Hammargren* and *Powers v. United Servs. Auto Ass’n*. However, both of these cases are
16 inapplicable. *Hoops v. Hammargren* is clearly of no relevance here because it discusses the
17 recognized fiduciary relationship between a physician and a patient *See Hoopes v. Hammargren*,
18 102 Nev. 425, 431 (1986). (“Society has placed physicians in an elevated position of trust, and,
19 therefore, the physician is obligated to exercise utmost good faith.”) Likewise, in *Powers v.*
20 *United Servs. Auto Ass’n*, the court discusses a fiduciary relationship between insurer and insured,
21 which is equally inapplicable. *Powers v. United Services Auto. Ass’n*, 115 Nev. 38, 42, 979 P.2d
22 1286, 1288 (1999) (Insurance company owes fiduciary duty to insured).

23 _____
24 ⁴See *Powers v. United Servs. Auto. Ass’n*, 115 Nev. 38, 979 P.2d 1286, 1288 (1999) (insurers and
25 insured); *Cook v. Cook*, 112 Nev. 179, 912 P.2d 264, 266 (1996) (attorney and client, spouses); *Fick v.*
26 *Fick*, 109 Nev. 458, 851 P.2d 445, 449–50 (1993) (fiancés); *Leavitt v. Leisure Sports Inc.*, 103 Nev. 81,
27 734 P.2d 1221, 1224 (1987) (corporate officers or directors and corporation). None of these recognized
28 categories of fiduciary relationships are present in this case. *See also, Giles v. Gen. Motors Acceptance*
Corp., 494 F.3d 865, 881 (9th Cir. 2007)(transaction between friends not transformed into “confidential
relationship” because one party trusted the other enough to not read the contract).

1 The only allegation Front Sight makes, which is wholly without evidentiary support, is
2 that a fiduciary relationship exists because lenders do not charge marketing fees, and Plaintiff paid
3 marketing fees. This vague “allegation” is simply not sufficient to establish a fiduciary
4 relationship.

5 Plaintiff attempts to use the same facts to establish a ‘confidential relationship,’ which
6 carries a duty that is similar to a fiduciary relationship, but the argument is equally flawed. Plaintiff
7 cites *Perry v. Jordan*, 111 Nev. at 945 as its sole authority on the issue, but the facts in *Perry v.*
8 *Jordan* are easily distinguishable. In *Perry v. Jordan*, the Supreme Court of Nevada held a
9 confidential relationship “is particularly likely to exist when there is a family relationship or one
10 of friendship,” and held that there was a confidential relationship between two close friends and
11 neighbors when the seller knew purchaser bought a store with intent to provide for her two
12 teenage daughters. See *Perry v. Jordan*, 111 Nev. at 945. Here, there is no alleged family or close
13 friendship as contemplated in *Perry v. Jordan*. Thus, *Perry v. Jordan* does not apply here, and
14 Plaintiff’s reliance on this case is misplaced.

15 Moreover, the Supreme Court of Nevada in *Franchise Tax Bd. of State of California v.*
16 *Hyatt*, 407 P.3d 717, 737 (Nev. 2017), which declined to extend the ruling in *Perry v. Jordan*,
17 held that *Perry* should *not* be construed as an expansive holding that includes any business
18 relationship. Another case that discusses and distinguishes *Perry v. Jordan*, is *Boink Sys., Inc. v.*
19 *Las Vegas Sands Corp.*, 208CV00089RLHGW, 2008 WL 11389204, at *4 (D. Nev. May 30,
20 2008).

21 “According to Perry, “a [special] relationship exists when one party gains the confidence
22 of the other and purports to act or advise with the other’s interests in mind ... [i]t is
23 particularly likely to exist when there is a family relationship or one of friendship.” Id.
24 (citation and quotations omitted). . . [however] case law does not support Plaintiffs’
25 proposition that a special relationship arises from general business relationships. To hold
26 that a comprehensive and negotiated contract between two corporate entities, as alleged
27 here, qualifies as a special relationship necessary to support a claim for breach of the
28 covenant of good faith and fair dealing would be a “significant step toward making this
exceptional covenant the rule.”
(Id.)

In order to find this quasi-fiduciary duty, there must still be a special relationship. “The

1 essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms,
2 since the person in whom trust and confidence is reposed and who accepts that trust and
3 confidence is in a superior position to exert unique influence over the dependent party.”
4 *SOC-SMG, INC. v. Christian & Timbers, LLC*, No. 308CV00392ECRVPC, 2010 WL 11591060,
5 at *5 (D. Nev. Feb. 4, 2010). ***There is no “confidential relationship” as a matter of Nevada law***
6 ***where the transaction is made at arms length between sophisticated businessmen.*** *SOC-SMG,*
7 *INC. v. Christian & Timbers, LLC*, No. 308CV00392ECRVPC, 2010 WL 11591060 (D. Nev.
8 Feb. 4, 2010); *Shlesinger v. Bank of Am., N.A.*, No. 2:11-CV-2020-PMP-PAL, 2012 WL 2995698
9 (D. Nev. July 23, 2012); *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865 (9th Cir. 2007);
10 *Rivard-Crook v. Accelerated Payment Techs., Inc.*, No. 2:10-CV-02215-MMD, 2012 WL
11 6138229 (D. Nev. Dec. 10, 2012).

12 Plaintiff’s most recent attempt to establish a special relationship does not allege any
13 “facts” which support the existence of a special relationship of trust between Front Sight and
14 LVD Fund. Rather, the motion to seal *still* describes a set of arms length negotiations between
15 sophisticated business people, i.e., a negotiated contract for the payment of marketing fees. See
16 *Rivard-Crook v. Accelerated Payment Techs., Inc.*, No. 2:10-CV-02215-MMD, 2012 WL
17 6138229, at *5 (D. Nev. Dec. 10, 2012): “Plaintiffs have merely alleged a series of promises or
18 contracts. . . [b]ut no special circumstances can be divined from this fact. If their position holds,
19 then any two contracting parties in privity with one another would have a confidential relationship
20 . . . [t]hat cannot be the law.”

21 Accordingly, there is no fiduciary, confidential, or otherwise special relationship between
22 Front Sight and LVD Fund.

23 **D. Sealing the records and amending the Protective Order would violate public**
24 **policy.**

25 It is important to note that, “there exists a presumption in favor of public access to records
26 and documents filed [with] the court.” *Howard v State of Nevada*, 128 Nev. 736, 142 (2012).

27 Moreover, “this presumption may be abridged only where the public right of access is outweighed
28

1 by a significant competing interest.” *Id.* The party seeking to seal a record or document bears the
2 burden of establishing sufficient grounds for denying access. *Id.* These principles apply equally in
3 criminal and civil proceedings. *Copper Sands Homeowners Ass’n v. Copper Sands Realty, LLC*,
4 2012 WL 1080291 (U.S. D.C., Dist Nev.)(citing *U.S.E.E.O.C. v. Caesars Entertainment, Inc.*,
5 237 F.R.D. 428, 432 (D.Nev. 2006).

6 The importance of giving great weight to the public’s interest in court access is codified in
7 N.S.C.R. Rule 3(4), which mandates that the court not seal a matter unless the sealing is “justified
8 by identified *compelling privacy or safety interests* that outweigh the public interest in access to
9 the court record.” Moreover, reference to Rule 3(4)(g), cited by Front Sight, shows that the type of
10 interests that are proper to protect are “intellectual proprietary or property interests such as trade
11 secrets as defined in NRS 600A.030(5).” Clearly, disclosing the amount of money that Piazza is
12 pilfering from Front Sight is not a proprietary interest or trade secret of Front Sight. Therefore,
13 Front Sight can not meet its burden needed to have this information sealed.

14 Plaintiff cited *Hollinger Int’l Inc. v. Hollinger Inc.*, as authority for its motion to seal,
15 however, this case supports Defendants’ opposition, because it supports the fact that the 200,000
16 members of Front Sight deserve to know whether Front Sight’s president is fraudulently taking
17 money from the company. *Hollinger Int’l Inc. v. Hollinger Inc.*, 04 C 698, 2005 WL 3177880, at
18 *3 (N.D. Ill. Jan. 19, 2005). In *Hollinger*, the Court held that although there is potential that a
19 party unlawfully paying themselves excessive compensation may suffer from embarrassment if
20 such malfeasance is exposed, the disclosure does not constitute good cause to withhold the
21 documents when weighed against the public interest in the alleged conduct. While, the court held
22 that certain tax documents were not relevant to the case, it stated that public concern does warrant
23 the disclosure of any relevant document that shows the unlawful transactions. Here, 200,000
24 people have already given money to Front Sight, and the same members, as well as the general
25 public, are being asked to give more money to support Plaintiff’s litigation (without any way to
26 verify if the money is actually being spent on the litigation or going directly into Piazza’s pocket).

1 The public and 200,000 Front Sight members have an interest in knowing where their money is
2 going and whether Front Sight is managing its revenues in a way that benefits its president, but
3 dramatically undermines the company's financial strength. Accordingly, the public concern
4 outweighs Plaintiff's privacy considerations here.

5 For the same reasons, Front Sight's request that the Protective Order be amended to seal
6 all documents reflecting Front Sight's financial information should be rejected. Such a carte
7 blanche order, without weighing Front Sight's interests with LVD Fund's right to access relevant
8 information and the public's right to access court records and proceedings, would violate the
9 aforementioned policies and law.

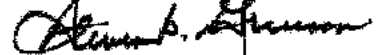
10 **III. CONCLUSION**

11 LVD Fund respectfully submits that Front Sight's motion to seal documents and amend
12 the Protective Order should be denied because: the tax returns were already in LVD Fund's
13 possession and are not subject to a confidentiality agreement (making them excluded from the
14 Protective Order pursuant to §2.3 thereof); the narrow amount of information not redacted from
15 the returns is relevant; Plaintiff has not established that the information is readily available
16 through alternative means; and balancing the public's interest in access to court proceedings and
17 documents with the very minimal privacy rights of Front Sight, weighs in favor of public
18 disclosure.

19 Dated: February 19, 2019

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

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



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

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

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

vs.

OPPOSITION TO DEFENDANT
LAS VEGAS DEVELOPMENT
FUND LLC'S MOTION FOR
APPOINTMENT OF RECEIVER

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

Defendants.

1 **OPPOSITION TO DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S**
2 **MOTION FOR APPOINTMENT OF RECEIVER**

3 Plaintiff FRONT SIGHT MANAGEMENT LLC ("Plaintiff"), by and through
4 undersigned counsel, hereby files its Opposition to Defendant Las Vegas Development Fund
5 LLC's Motion for Appointment of Receiver.

6 This Opposition is based on the papers on file herein, including the Second Amended
7 Complaint, and the Memorandum of Points and Authorities, the Declarations of Dr. Ignatius
8 Piazza, Mike Meacher, and Robert Dziubla (as referenced herein), the exhibits attached thereto,
9 together with any evidence or argument presented to the Court at the hearing of this matter.

10 DATED this 21st day of February, 2019.

11 **ALDRICH LAW FIRM, LTD.**

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **PROCEDURAL HISTORY**

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

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

10 The Court held a hearing on Wednesday, October 31, 2018 on the following motions: (1)
11 Plaintiff's Petition for Appointment of Receiver and for an Accounting; (2) Plaintiff's Motion for
12 Protective Order; and (3) Plaintiff's Motion for Temporary Restraining Order and Preliminary
13 Injunction. The Court granted the accounting portion of the Petition for Appointment of
14 Receiver and for an Accounting, as to Defendant EB5 Impact Advisors ("EB5IA") and also
15 granted in part the Motion for Temporary Restraining Order.

16 On or about November 27, 2018, the Court entered an Order Granting Plaintiff's Petition
17 for an Accounting.

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

24

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

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

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

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

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

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

13 On January 4, 2019, Plaintiff filed a Second Amended Complaint. The causes of action
14 include: (1) Fraud/Intentional Misrepresentation/Concealment Against All Defendants; (2)
15 Breach of Fiduciary Duty Against All Defendants; (3) Conversion Against All Defendants; (4)
16 Civil Conspiracy Against All Defendants; (5) Breach of Contract Against Defendants EB5IA and
17 LVDF; (6) Contractual Breach of Implied Covenant of Good Faith and Fair Dealing Against the
18 Entity Defendants; (7) Tortious Breach of Implied Covenant of Good Faith and Fair Dealing
19 Against the Entity Defendants; (8) Intentional Interference with Prospective Economic
20 Advantage Against the Entity Defendants and Defendant Dziubla; (9) Unjust Enrichment
21 Against All Defendants; (10) Negligent Misrepresentation Against All Defendants; (11)
22 Negligence Against All Defendants; and (12) Alter Ego Against Defendants Dziubla, LVDF,
23 EB5IA, and EB5IC.

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

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

6 On or about January 18, 2019, Defendants, at the request of Ms. Holbert, again recorded
7 a Notice of Breach, Default and Election to Sell Under of Trust, alleging various defaults. The
8 Affidavit of Authority to Exercise the Power of Sale was signed by Defendant Dziubla on
9 January 4, 2019.

10 On January 21, 2019, after Defendants failed to timely respond to the Second Amended
11 Complaint, Plaintiff filed a Three Day Notice of Intent to Take Default. (Exhibit 2.)

12 On January 28, 2019, Defendants filed the following motions: (1) Motion to Dismiss
13 Plaintiff's Second Amended Complaint filed by Defendants Las Vegas Development Fund,
14 Robert Dziubla and EB 5 Impact Advisors; (2) Motion to Dismiss Plaintiff's Second Amended
15 Complaint filed by Defendant Jon Fleming; (3) Motion to Dismiss Plaintiff's Second Amended
16 Complaint filed by Defendant EB5 Impact Capital Regional Center; (4) Motion to Dismiss
17 Plaintiff's Second Amended Complaint filed by Defendant Linda Stanwood; and (5) Motion to
18 Strike Portions of Plaintiff's Second Amended Complaint. On February 1, 2019, Defendants
19 filed an Amended Motion to Dismiss Plaintiff's Second Amended Complaint filed by
20 Defendants Las Vegas Development Fund, Robert Dziubla and EB 5 Impact Advisors. On
21 February 4, 2019, Defendants filed a Counter-Motion for Relief from the November 20, 2018
22 Court Order Granting Plaintiff's Petition for an accounting of Defendant EB5 Impact Advisors
23 LLC. The hearing on those motions is April 3, 2019.

24

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

6 **II.**

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

8 **A. Procedural History**

9 The Court has heard a myriad of motions in this case already. The facts are the same
10 now as they were back on October 4, 2018 when Plaintiff filed the first Motion for Temporary
11 Restraining Order (and other motions) and on October 31, 2018 when the Court held the hearing
12 on the first Motion for Temporary Restraining Order (and other motions).

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

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

1 The Second Amended Complaint is the operative pleading, and Plaintiff incorporates
2 those facts and allegations as well. Nearly all of the exhibits to Dr. Piazza's Declaration are
3 attached to the Second Amended Complaint.

4 Defendants have thus far refused to answer these serious allegations, instead filing a
5 second series of Motions to Dismiss. Defendants have asserted no claims or affirmative
6 defenses. Nevertheless, Defendants come to this Court seeking affirmative relief to which they
7 are not entitled.

8 **B. Facts Related to Breaches Alleged by Defendants**

9 The first alleged default is improper use of loan proceeds. In support of this argument,
10 Defendants cite Section 1.7(e) of the Construction Loan Agreement and Exhibit 15 of Dziubla's
11 Declaration.¹ Defendants claim that "Front Sight revealed that although it has spent all of the
12 \$6,375,000 in loan proceeds since the initial disbursement in October 2016, less than \$2.7
13 million of the proceeds were actually spent on construction of the EB-5 project." (Defendants'
14 Motion for Appointment of Receiver, p. 11, ls. 9-11.) Without explanation, Defendants then
15 claim that "more than \$3.675 million of EB-5 loan proceeds have been diverted to fund matters
16 that are not related to completion of the approved EB-5 plan, such as payment of Front Sight's
17 general overhead expenses, thereby severely prejudicing the EB-5 investors." (Defendants'
18 Motion for Appointment of Receiver, p. 11, ls. 11-14.) As has become custom, Defendants do
19 not tell the Court the whole truth, nor do they provide any evidence to support their claim that
20 the loan proceeds have been used for overhead.

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

23
24 ¹ The brief actually says the exhibit is "attached hereto," but it is actually attached to Dziubla's Declaration.

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Section 1.7 EB-5 Program Requirements.

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

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

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

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

1 (Emphasis added.)

2 Taking the contents of Exhibit 15 to Dziubla's Declaration as true, which Defendants
3 apparently concede, the expenses "from and including July 1, 2017, through and including
4 October 30, 2018" total at least \$5,990,464.74, which Dr. Piazza's letter notes is "well in excess
5 of the \$3,750,000.00 in advances made by Lender to Borrower from and after July 1, 2017." Dr.
6 Piazza also notes that this list of expenses is not exhaustive. Prior to Defendants' Motion for
7 Appointment of Receiver, Defendants never advised Plaintiff that any of the expenses listed in
8 Exhibit 15 were inappropriate. Indeed, they are appropriate by the clear terms of the
9 Construction Loan Agreement. Defendants' claim of improper use of loan funds is completely
10 bogus. Defendants' math is suspect – Defendants simply disregard entire categories of
11 legitimate expenses to attempt to claim improper spending. This is simply an empty attempt by
12 Defendants to justify their disclosure of Plaintiff's tax records.

13 Defendants inappropriately attached and disclosed private tax information of Plaintiff,
14 claiming Dr. Piazza is "diverting profits" and "misappropriating loan proceeds and endangering
15 Front Sight's solvency." (Defendants' Motion, p. 12, ls. 2-3.) Defendants ignore what
16 "diverting profits" and "misappropriating" funds means. As Plaintiff has learned, Defendants
17 have misappropriated funds that Plaintiff provided for specific purposes to their own purposes.
18 That has been shown by the few documents Defendant EB5IA provided in response to the
19 Court's order. "Misappropriation" is defined as "[t]he unauthorized, improper, or unlawful use
20 of funds or other property for purpose other than that for which intended." Black's Law
21 Dictionary 998 (6th Ed. 1990). Defendants' misuse of Plaintiff's funds literally fits the definition
22 of misappropriation. On the other hand, Dr. Piazza is the owner of Front Sight. Defendants
23

1 want to disregard their responsibility and claim that Front Sight is supposed to do Defendants'
2 job and finance the project itself. Plaintiff is not in breach.

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

5 [I]t is not accurate to say that loan proceeds must be applied toward construction
6 of the Project. In fact, USCIS policy requires that loan proceeds must be applied
7 toward the Project in general, but loan proceeds can be used for any expense
8 related to the Project, except for interest payments made on the EB-5 loan itself
9 and expenses of the EB-5 lender in connection with the EB-5 offering and the
10 loan. The second sentence also incorrectly states that the construction schedule
11 and construction budget must be substantially complied with in order to meet the
12 immigrant investors' obligations under the EB-5 program. In fact, USCIS policy
13 requires only that the EB-5 investors' capital be used to fund the Project described
14 in the business plan filed with USCIS. There is no requirement that the
15 construction schedule or construction budget be complied with in order for the
16 EB-5 investors to obtain their visa. I have personally been engaged to provide
17 legal assistance on a number of EB-5 projects that had delays in construction and
18 changed in size and scope, which did not result in any EB-5 investors losing their
19 immigration benefits under the EB-5 program. It is quite common that the
20 construction schedule or construction budget undergo changes in any construction
21 project, including those funded with EB-5 capital. Just as with this Project, delays
22 or changes in construction plans occur when the EB-5 lender fails to raise
23 sufficient capital to complete the project originally contemplated, or within the
24 time contemplated. As long as the EB-5 investors can show that their capital was
invested in the project generally described in the business plan filed with USCIS,
whether there were changes in the size of the project, project budget or
construction timeline, the EB-5 investors will receive their visas so long as the
number of jobs created as a result of the work on the project are sufficient for
each investor in the project. USCIS does not deny visas to EB-5 investors in
projects where there has been a change in construction schedule or construction
budget.

19 (Exhibit 3, ¶12.) Plaintiff is not in breach.

20 The third alleged event of default –material delays in construction or failure to timely
21 complete the project – is not an event of default at all. Ms. Holmes addressed this issue to, as set
22 forth above. Additionally, that alleged default has not even occurred, so by definition no event
23 of default has occurred. There can be no breach a year before a deadline has passed.

1 Nevertheless, Plaintiff continues to move forward with the project despite Defendants' failure
2 and refusal to provide financing.

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

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

18 (Exhibit 3, ¶13.) Plaintiff is not in breach.

19 Even so, Exhibit 12 to Dziubla's Declaration, while still alleging a breach due to changes
20 in "Patriot Pavilion" stated that it was being reduced "to be 57,000 square feet without our prior
21 written consent."² While every project experiences some changes during the building process,
22 the changes to Front Sight's project have not been material. Defendant Dziubla's claim that the
23 "Patriot Pavilion" has been reduced from 85,000 square feet to 25-30,000 square feet is again
24 disingenuous. The size of the *classroom* in the "Patriot Pavilion" has been reduced, but the
overall scope and size of "Patriot Pavilion" itself has not changed significantly and work there
continues to progress. (Meacher Supplemental Declaration filed October 30, 2018, ¶7.)
Moreover, Dziubla tours the project approximately once a quarter – the latest tour occurred on

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

1 October 11, 2018 – after this litigation began. Dziubla chose not to attend other inspections.
2 (Correspondence regarding inspection, attached hereto as **Exhibit 4**.) Plaintiff has kept no
3 secrets about the progress of the project, and Defendants’ claim otherwise is disingenuous.

4 The fifth alleged default is the alleged failure to obtain senior debt. The definition of
5 “Senior Debt” provides that an additional loan “will be sought” and that Plaintiff “will use its
6 best efforts” to obtain a senior loan. Plaintiff was not *required* to obtain senior debt, although it
7 has done so. Section 5.27 of the CLA indicates Plaintiff will use its “best efforts” to obtain
8 Senior Debt.

9 Nevertheless, Defendants have disingenuously decided not to include the fact that
10 Plaintiff has obtained such financing, and Defendants have indicated such financing is
11 acceptable. Those financing documents were provided to Defendants on October 31, 2017. *See*
12 Exhibit 19 to Dr. Piazza’s Declaration, p. 6. Moreover, in Defendant EB5 Impact Capital’s Q3
13 2017 project update to its investors, Defendants specifically referenced the construction line of
14 credit and stated: “The terms of this agreement and note are completed and this line of credit
15 will be signed by the end of October.” *Id.* Defendants repeatedly updated investors and
16 referenced the senior construction loan, and those updates indicated that the financing that had
17 been obtained was in compliance with the Construction Loan Agreement (See **Exhibits 5-8**
18 attached hereto.)

19 The sixth alleged default is failure to provide monthly project costs. Again, Plaintiff is
20 not in default. Because Defendants have failed to provide financing, Plaintiff has been
21 proceeding through other means. As has been explained to Defendants, the grading work
22 continues. Vertical construction cannot. Defendants long ago received the project costs related
23 to the grading.
24

1 The seventh alleged default is the assertion that Plaintiff failed to notify Defendants of an
2 event of default. Defendants claim that “Front Sight has failed to notify LFD Fund of either (1)
3 the existence of certain events of default or (2) a detailed statement of the steps being taken to
4 cure the event of default.” (Defendants’ Motion for Appointment of Receiver, p. 15, ls. 7-9.)
5 Without more specifics, it is difficult for Plaintiff to respond to this assertion. However, Plaintiff
6 directs the Court to the various correspondence related to Defendants’ claims of default and
7 Plaintiff’s responses thereto. *See* Exhibits 19 and 21 of Dr. Piazza’s Declaration. There have
8 been no defaults, so there is no duty to report anything.

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

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

17 Paragraph 6 of the First Amendment to Loan Agreement required Plaintiff to provide proof of
18 expenses up to “at least the amount of money as has been disbursed”

19 Defendants deny receiving such documentation. However, Defendants again fail to
20 advise the Court that they have received thousands of pages of documents showing Plaintiff’s
21 expenses on the project. Plaintiff has done so and then some, despite the fact that many of the
22 documents were destroyed in a wildfire, which the parties acknowledged in the First Amendment
23 to Loan Agreement and even though not required by the First Amendment to Loan Agreement
24

1 (because the USCIS or Department of Justice had not required it). See Exhibits 19 and 21;
2 Meacher Supplemental Declaration, Exhibits 29 and 30. Defendants continue to demand
3 “unimpeded access to Front Sight’s books and records regarding the project and Front Sight’s
4 operations,” which is beyond what the agreement allows. (See Exhibit 13 to Dziubla
5 Declaration.) Plaintiff has more than complied and is not in breach.

6 The **ninth** alleged default is failure to allow site inspection. However, Dziubla tours the
7 project approximately once a quarter – the latest tour occurred on October 11, 2018 – after this
8 litigation began. Plaintiff agreed to allow Dziubla to tour the project (without litigation attorneys
9 and experts) but he has declined to do so. (Exhibit 4.)

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

15 The **eleventh** and **twelfth** alleged defaults are the alleged failure to pay default interest
16 and legal fees. Plaintiff is not in default, and therefore, is not obligated to pay either default
17 interest or attorneys’ fees. Further, the attorneys’ fee provision requires “reasonable” attorney’s
18 fees. Defendants have done nothing to attempt to address the reasonableness of the alleged
19 attorney’s fees. Because there has been no default, the claim for attorneys’ fees is inherently
20 unreasonable.

21 ///

22 **III.**

23 **ARGUMENT AND AUTHORITIES**

24

1 Defendants seek appointment of a receiver pursuant to either NRS 32.010 or NRS
2 107.100. (Defendants' Motion, p. 20, ls. 16-17.) However, Defendants are not even entitled to
3 seek appointment of a receiver because they have not commenced an "action." Moreover,
4 Defendants do they meet the requirements of NRS 32.010 or NRS 107.100. The doctrine
5 unclean hands also bars Defendants from requesting equitable relief. Finally, Defendants cannot
6 and have not shown reasonable likelihood of success on the merits or irreparable harm.

7 **A. Appointment of a Receiver Is an Extreme Remedy**

8 Courts do not generally look favorably on the appointment of a receiver. In *Bedore v.*
9 *Familian*, 122 Nev. 5, 11, 125 P.3d 1168 (2006), the Nevada Supreme Court said that "the
10 appointment of a receiver . . . is "a **harsh and extreme remedy** which should be used sparingly
11 and only when the securing of ultimate justice requires it." *Id.* (emphasis added). [I]f **another**
12 **remedy is available to achieve the same outcome**, the district court should not resort to
13 dissolution or the appointment of a receiver." *Id.* (emphasis added).

14 The Nevada Supreme Court has directed that:

15 The appointment of a receiver *pendente lite* is a harsh and extreme remedy which
16 should be used sparingly and only when the securing of ultimate justice requires
17 it. *Bowler v. Leonard*, 70 Nev. 370, 269 P.2d 833 (1954). A corollary of this rule
18 is that if the desired outcome may be achieved by some method other than
19 appointing a receiver, then this course should be followed. *State v. District Court*,
20 146 Mont. 362, 406 P.2d 828 (Mont.1965); see also *Hawkins v. Aldridge*, 211
21 Ind. 332, 7 N.E.2d 34 (Ind. 1937). [¶] The reasons for the above rules are
fundamental: appointing a receiver to supervise the affairs of a business is
potentially costly, as the receiver typically must be paid for his or her services. A
receivership also significantly impinges on the right of individuals or corporations
to conduct their business affairs as they see fit, and may endanger the viability of
a business. The existence of a receivership can also impose a substantial
administrative burden on the court.

22 *Hines v. Plante*, 99 Nev. 259, 261-62 (1983). See also, *Reimer v. SCM Corp. of Nevada*, 127
23
24

1 Nev. 1169 (2011). The *Hines* court also noted in a footnote that the concern about a receiver
2 endangering the viability of a business “is exacerbated...where the appointed receivers apparently
3 did not have extensive mining experience.” *Id.*, fn. 3. Plaintiff’s business model is unique.

4 The party seeking appointment of a receiver bears the burden of establishing a reasonable
5 likelihood of success on the merits. *Hines v. Plante*, 99 Nev. 259, 262, 661 P.2d 880 (1983);
6 NRS 32.010; NRS 107.100. *See also Charmicor, Inc. v. Bradshaw Fin. Co.*, 92 Nev. 310, 313,
7 550 P.2d 413 (1976)(“Although appellant alludes to many facts in its brief which suggest that the
8 property in question is suffering from waste, those facts are substantiated nowhere in the record
9 before us. The record is void of any evidentiary matter proffered to the court below in support of
10 appellant’s motion for the appointment of a receiver.” (internal citations omitted).)

11 The movant also has the burden of proving inadequate remedy at law. *State ex rel.*
12 *Nenzel v. Second Jd. Dist. Ct.*, 49 Nev. 145, 160, 241 P. 317 (1925), superseded by statute as
13 stated in *Laing v. Laing*, 2010 Nev. LEXIS 151 (Nev. Feb. 25, 2010).

14 Applying this standard that a receivership is a harsh remedy, which should be used
15 sparingly and only when no other relief is available, there is no justification for appointment of a
16 receivership in the present case.

17 **B. Defendants Cannot Seek Appointment of a Receiver**

18 A petition for appointment of receiver is ancillary to the action and cannot be the sole
19 claim for relief. *Gordon v. Washington*, 295 U.S. 30, 55 S. Ct. 584, 79 L. Ed. 1282 (1935). In
20 *Gordon*, the U.S. Supreme Court addressed this specific issue, stating: “But there is no occasion
21 for a court of equity to appoint a receiver of property of which it is asked to make no further
22 disposition.” *Id.* at 295 U.S. at 37. Noting that receivership of an insolvent corporation
23 sometimes occurs with the consent of the corporation, the Court noted:
24

1 Whenever the attempt thus to extend it, by using the receivership as an end
2 instead of a means, has been brought to the attention of this Court, it has pointed
3 out that a federal court of equity will not appoint a receiver where the
4 appointment is not ancillary to some form of final relief which is appropriate for
5 equity to give.

6 *Id.* at 38 (citation omitted).

7 In *Nenzel, supra*, the Nevada Supreme Court denied a petition for appointment of
8 receiver because the complaint sought no other relief. *Id.* Other courts agree. “Independently of
9 statutes, receivership is a remedy to be invoked only in aid of the primary relief sought. It cannot
10 of itself constitute such primary relief, and hence the court must have jurisdiction independent of
11 the receivership.” *Laumeier v. Sun-Ray Prods. Co.*, 50 S.W. 2d 640, 645 (Mo. 1932)(citations
12 omitted)(also noting that petitioner had to state a “cause of action for final relief. . .”). *See also*,
13 *Houston & B. v. R. Co. v. Hughes*, 182 S.W. 23, 28 (Ct. App. Tex. 1915)(“the appointment of a
14 receiver is an ancillary remedy, and . . . before a receiver will be appointed the plaintiff’s
15 petition. . . must state a cause of action against the defendant” and “appointment of a receiver of
16 a corporation is not a cause of action but only an ancillary right to a cause of action.”)

17 The Ohio Court of Appeals explained that even where there was a state statute with a
18 “catch all” phrase similar to NRS 32.10(6), “the appointment of a receiver is merely ancillary to
19 the main cause of action and incidental to the chief and ultimate relief sought.” *In re Estate of*
20 *Philips*, 1996 Ohio App. LEXIS 2681 (Ct. App. Ohio 1996)(holding that the administration of an
21 estate, without more, was not “a pending cause upon which to base the appointment of a
22 receiver”).
23
24

1 The plain language of NRS 32.010(1) and (2) support this position. NRS 32.010(1) and
2 (2) provide, in pertinent part:³

3 **NRS 32.010 Cases in which receiver may be appointed.** A receiver may
4 be appointed by the court in which an action is pending, or by the judge thereof:

5 1. In an action by a vendor to vacate a fraudulent purchase of property, or by
6 a creditor to subject any property or fund to the creditor's claim, or between
7 partners or others jointly owning or interested in any property or fund, on
8 application of the plaintiff, or of any party whose right to or interest in the
9 property or fund, or the proceeds thereof, is probable, and where it is shown that
10 the property or fund is in danger of being lost, removed or materially injured.

11 2. In an action by a mortgagee for the foreclosure of the mortgage and sale
12 of the mortgaged property, where it appears that the mortgaged property is in
13 danger of being lost, removed or materially injured, or that the condition of the
14 mortgage has not been performed, and that the property is probably insufficient to
15 discharge the mortgage debt.

16 ...

17 6. In all other cases where receivers have heretofore been appointed by the
18 usages of the courts of equity.

19 [1911 CPA § 251; RL § 5193; NCL § 8749]

20 The term "action," "in its usual legal sense means a lawsuit brought in a court; a formal
21 complaint within the jurisdiction of a court of law." Black's Law Dictionary 28 (6th Ed. 1990).
22 Defendants have filed several motions to dismiss; they have not asserted any claims for relief or
23 affirmative defenses.

24 Defendants also have not cited any circumstance where a receiver was appointed in the
absence of the assertion of a cause of action or affirmative defense. Finally, Defendants cannot
demonstrate a "reasonable probability of success" because there is nothing for them to be

³ Paragraphs 3, 4, and 5 are inapplicable. Paragraphs 3 and 4 apply "[a]fter judgment," and paragraph 5 does not apply because this is not a situation where "a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights."

1 successful on. The Court's inquiry can and should end here – this is a jurisdictional issue – and
2 the Motion for Appointment of Receiver should be denied outright.

3 **C. The Doctrine of Unclean Hands Precludes Defendants' Request for Equitable Relief**

4 The doctrine of unclean hands bars equitable relief to a party who has engaged in
5 improper conduct in the matter in which the party is seeking relief. *Truck Ins. Exch. v. Swanson*,
6 124 Nev. 629, 638-39, 189 P.3d 656 (2008). “The unclean hands doctrine derives from the
7 equitable maxim that ‘he who comes into equity must come with clean hands’” and requires that
8 plaintiffs seeking equitable relief “act[] fairly and without fraud or deceit as to the controversy in
9 issue.” *North East Med. Servs. v. Cal. HHS*, 670 Fed. Appx. 615 (9th Cir. 2016), quoting
10 *Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1097 (9th Cir. 1985). Noting that the movant had
11 “acted unfairly to try and reap a windfall,” the Court barred the requested equitable relief. *Id.* at
12 616.

13 “In determining whether a party's connection with an action is sufficiently offensive to
14 bar equitable relief, two factors must be considered: (1) the egregiousness of the misconduct at
15 issue, and (2) the seriousness of the harm caused by the misconduct.” *Las Vegas Fetish &*
16 *Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 276, 182 P.3d 764 (2008).
17 When those factors weigh against granting the requested equitable relief, the doctrine of unclean
18 hands bars that remedy. *Id.*

19 Defendants' nefarious and fraudulent conduct is set forth in the Second Amended
20 Complaint and attached exhibits, the Declarations incorporated herein by reference and those
21 attached exhibits, and the exhibits attached hereto, which includes the following:

- 22 1. Dziubla and Fleming, as agents of the entity Defendants, misrepresented their
23 EB5 experience. (Exhibits 1-3, 7 to Piazza Decl.)

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

1 which marketing fees were financed by Plaintiff to the tune of hundreds of
2 thousands of dollars. Defendants have been ordered by the Court to provide said
3 accounting, however, Defendants failed and refused to provide the required
4 documents and Plaintiff's now have a Motion to Compel and for Sanction
5 pending before the Court. (See Exhibits 10, 15 to Piazza Decl.)

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

13 9. When Front Sight asked for full disclosure on the financial arrangements with the
14 various agents and brokers Defendant Dziubla claimed to have in place,
15 Defendant Dziubla represented to Front Sight that said agents require strict
16 confidentiality on all financial arrangements with the Regional Center and thus
17 Defendant Dziubla could not disclose to Front Sight the financial splits. (See,
18 e.g., Exhibits 16 and 17 to Piazza Decl.) Front Sight has recently learned from
19 an experienced and reputable industry consultant that these representations are not
20 true. In reality, developers often own the regional centers handling their projects,
21 and financial arrangements with the brokers and agents are normally transparent
22 and regularly disclosed to the developers.

- 1 10. When Defendant Dziubla was soliciting Front Sight to pay for the Regional
2 Center, Front Sight requested to be an owner of EB5IC since Front Sight was
3 paying for it, but Defendant Dziubla responded that USCIS would not allow it and
4 would look unfavorably on a developer owning a regional center. This statement
5 was false. (Piazza Decl., **Exhibit 16.**)
- 6 11. Dziubla and Fleming, as agents of the entity Defendants, dissolved EB5 Impact
7 Advisors LLC without notifying Plaintiff or USCIS. (See **Exhibit 23** to Piazza
8 Decl.)
- 9 12. Dziubla and Fleming, as agents of the entity Defendants, dissolved EB5 Impact
10 Advisors, LLC without paying plaintiff \$36,000 that Plaintiff was owed under
11 agreements with EB5 Impact Advisors, LLC. (See **Exhibits 15 (p.3, par. 3(a)),**
12 **23** to Piazza Decl.)
- 13 13. Dziubla and Fleming, as agents of the entity Defendants, delivered less than 10%
14 of the funding promised after Plaintiff has paid over \$500,000 in marketing and
15 administrative fees, with Dziubla and Fleming, as agents of the entity Defendants,
16 refusing to provide any accounting of where said money was spent. (Declaration
17 of Dr. Ignatius Piazza, **Exhibit 1.**)
- 18 14. Dziubla and Fleming, as agents of the entity Defendants, billed Plaintiff \$20,000
19 for an economic study associated with the development of the Regional Center
20 and EB5 project, then without Plaintiff's knowledge, offered the economist, Sean
21 Flynn, who prepared the economic study, a percentage of the EB5 project, with
22 promises of large financial returns, in consideration for Flynn not accepting the
23 \$20,000 payment made by Plaintiff for said economic study. Plaintiff was not
24

1 aware of this "bait and switch" conduct until just recently and believes Dziubla
2 and/or Fleming, as agents of the entity Defendants, pocketed the money. Dziubla
3 and Fleming, as agents of the entity Defendants, have failed and refused to
4 account for the \$20,000. (Declaration of Dr. Ignatius Piazza, **Exhibit 1** and
5 Declaration of Mike Meacher, **Exhibit 2.**)

6 15. After Plaintiff had paid over \$300,000 to Dziubla and Fleming, as agents of the
7 entity Defendants, and Dziubla and Fleming, as agents of the entity Defendants,
8 failed to provide the initial \$25 million dollars of the \$75 million that had been
9 promised, Dziubla misrepresented that he and Defendant Fleming had exhausted
10 all of their personal finances and those of the Defendant entities, and needed to
11 restructure the funding project at significant legal and administrative costs to
12 Plaintiff. Dziubla and Fleming, as agents of the entity Defendants, stated
13 Defendants would need an additional \$8,000 per month for ongoing marketing of
14 the project abroad. Plaintiff has paid said additional monthly marketing fees but
15 no marketing has occurred and Plaintiff believes Dziubla has used the marketing
16 funds to fund his own personal lifestyle, which Plaintiff's investigation reveals
17 includes a million-dollar home, new luxury cars, multiple properties, and bank
18 accounts with substantial sums of money now in them. (Declaration of Dr.
19 Ignatius Piazza, **Exhibit 1.**)

20 16. Dziubla and Fleming, as agents of the entity Defendants, are holding hostage
21 \$36,000 of Plaintiff's money as well as \$375,000 in investor money that was
22 supposed to be released to the project many weeks ago. Dziubla and Fleming, as
23 agents of the entity Defendants, are attempting to starve the construction of the
24

1 project and extort and leverage Plaintiff into foregoing these claims against
2 Defendants. (Declaration of Dr. Ignatius Piazza, **Exhibit 1**.)

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

15 18. As Plaintiff has recently learned after consulting EB-5 Expert Catherine Debono
16 Holmes, Esq., Defendants made the following misrepresentations:

- 17 a. Defendant Dziubla represented that his "partner," Empyrean West, was "the
18 exclusive EB-5 firm in Vietnam." This was false.
- 19 b. Defendants' "estimated direct out-of-pocket expenses" of \$300,000 for the EB-5
20 offering was "substantially inflated."
- 21 c. Establishment of a regional center is "highly unusual," and the regional center is
22 always paid for by the owner of the regional center (Defendant EB5IC in this
23
24

1 case) and not the party seeking financing (Plaintiff in this case). This was
2 misleading.

- 3 d. Defendants could have entered into a relationship with an existing regional center,
4 but did not, and did not disclose substantial disadvantages of EB-5 financing.
- 5 e. Defendants misrepresented the timeline for this financing.
- 6 f. Defendants “substantially overstate[d]” the ability of a new regional center to
7 procure financing.
- 8 g. Defendants misled Plaintiff into believing Defendants could raise \$25 million in
9 only four months.
- 10 h. When questioned by Plaintiff’s representatives, Defendants gave a bogus and
11 untrue excuse for the slow sales.
- 12 i. On December 16, 2015, Defendants again misrepresented that they could raise
13 \$25 million by February 8, 2016.
- 14 j. Defendants were apparently unaware about whom it was appropriate to hire
15 persons to solicit EB-5 financing unless they are licensed with the SEC.

16 Ms. Holmes’ report is attached hereto as **Exhibit 3**.

17 19. As the partial disclosure of documents produced pursuant to this Court’s order
18 showed, Defendants used Plaintiff’s funds that were specifically paid to
19 Defendants for marketing as their own personal piggy bank, making many
20 payments to Dziubla, Fleming, or entities controlled by them, and refusing to
21 provide documentation to substantiate where any of the money went, including
22 tens of thousands of dollars to unknown persons. (*See generally*, Plaintiff’s
23 Motion to Compel.)
24

1 Defendants have breached the agreement with Plaintiff and then wrongfully alleged
2 Plaintiff is in default.

3 The egregiousness of the misconduct at issue and the seriousness of the harm caused by
4 Defendants' misconduct is evident. The doctrine of unclean hands precludes granting the relief
5 Defendants seek. The Court must not allow Defendants to continue in their unlawful conduct,
6 nor should they be permitted to profit by their inappropriate behavior. The Motion for
7 Appointment of Receiver should be denied.

8 **D. Defendants Cannot Show Irreparable Harm**

9 Defendants claim the EB-5 investors will suffer irreparable harm. (Defendants' Motion,
10 pp. 21-22.) Of course, they cite nothing in support of that assertion. But that is not surprising, as
11 that assertion is untrue. Ms. Holmes explained:

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

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

22 If the Project is not built substantially in accordance with
23 the plan and schedule that was submitted to, and approved by,
24 USCIS as part of the EB-5 approval process, the EB-5 investors
who have funded the construction loan to Borrower may not
receive their permanent green cards and will be subject to
deportation from the United States — all after having uprooted
themselves and their families from their home countries to move to
the United States, the land of their dreams."

This statement repeats the same inaccurate information — that the Project must be
built in accordance with its original plan and schedule as submitted to USCIS — as
the earlier paragraphs noted in paragraphs 12 and 13 of this Report. In addition, it

1 implies that there is an immediate risk of deportation, which is also inaccurate due
2 to the delays in processing applications that currently exist within the EB-5
3 Program. The timeline for an EB-5 investor from the date he or she files an I-526
4 Petition for approval of an EB-5 investment through the date the investor files an
5 I-829 Petition for removal of conditions is approximately 5 years. This means
6 that EB-5 Investors would not need to present evidence of job creation to USCIS
7 for 5 years from the date each EB-5 investor first filed an I-526 Petition. Until
8 that time, the EB-5 Investor is not required to file any information with USCIS.
9 For EB-5 investors from mainland China, the timeline from date of filing an I-526
10 Petition until the date of filing an I-829 Petition has been estimated at 14 years by
11 Charles Oppenheim, the Chief, Immigrant Visa Control & Reporting, U.S.
12 Department of State ("DOS") at a recent EB-5 Conference held in April 2018.
13 (See this report of Mr. Oppenheim's presentation: [https://wolfsdorf.com/eb-5-
14 update-new-state-department-data-released/](https://wolfsdorf.com/eb-5-update-new-state-department-data-released/).) This means that no EB-5 investors
15 in this Project will be required to submit information on this Project to USCIS for
16 at least the next three years or more for investors from China.

17 **Exhibit 3, ¶14.** There is no irreparable harm, and Defendants' Motion for Appointment of
18 Receiver must be denied.

19 **E. There Is No Default and Defendants Have Not Shown Any Breach**

20 Defendants cite provisions of the CLA and Deed of Trust that Defendants purport to
21 allow them seek appointment of a receiver. (Defendant's Motion, pp. 22-23.) Without
22 establishing any facts to support this position, Defendants claim that a receiver should be
23 appointed due to "unreasonable delay," "inability to [timely] complete the project," and
24 "substantial unapproved departures from the USCIS approved project plans," a receiver is
25 necessary and appropriate. (Defendants' Motion, p. 24.) Each of these items has been addressed
26 above. These are meritless claims and the Motion should be denied.

27 **F. There Is No Danger of Waste**

28 Again, Defendants have asserted no claims or affirmative defenses. They also have
29 provided no analysis to support the claims of waste. Nonetheless, they claim Front Sight's
30 "financial viability" is in question due to their claim (by extrapolation) that Dr. Piazza received
31 money from Front Sight. Plaintiff has also addressed this issue previously in this brief. Dr.

1 Piazza is the owner of Front Sight (Defendants misappropriated Plaintiff's funds; Dr. Piazza is
2 entitled to be paid from his company). The claim that Dr. Piazza's allegedly receiving money is
3 "potentially devastating" to the investors is supported by nothing but Mr. Greer's Declaration
4 and reference to two exhibits to Mr. Greer's Declaration that have nothing to do with these
5 claims.

6 Conspicuously absent from Defendants' brief is any evidence that these claims are true.
7 Defendants have had Plaintiff's financial information for years. If Front Sight's viability were
8 really in jeopardy, Defendants would have an expert to so testify, rather than relying on Mr.
9 Greer's Declaration and two non-related exhibits. Also conspicuously absent is any evidence of
10 the claim of "Piazza's misuse of EB-5 loan proceeds" – not a single document is provided to
11 support this untrue claim.

12 Defendants also cite to Mr. Greer's Declaration and an exhibit thereto to claim that "each
13 dollar Piazza raised results in Front Sight incurring more than \$20 in future liability."
14 (Defendants' Motion, p. 26, ls. 5-6.) While Defendants can be given credit for creativity for this
15 argument, again, conspicuously absent is any *actual evidence* that what Defendants claim is true.
16 No expert to support the assertion. No evidence of how much any of the "gifts" being offered
17 actually cost Front Sight. Finally, Defendants assert Front Sight is selling unregistered
18 securities, but again, provide nothing in support of that claim.

19 Defendants claim that Front Sight "Will Continue to Violate the Law" without court
20 intervention. (Defendants' Motion, p. 27, ls. 8-9 (heading)). Again, the only "evidence"
21 provided are three exhibits attached to Mr. Greer's Declaration. Those three exhibits are two
22 "publications" from 2007 or earlier and a receiver order from a totally unrelated case back in
23 2009. They have no relevance to this case whatsoever, and do not support Defendants' position
24

1 that Front Sight “continues to violate the law.” They certainly do not support the claim that
2 waste is occurring.

3 **CONCLUSION**

4 Based on the foregoing, Defendants’ Motion for Appointment of Receiver should be
5 denied.

6 DATED this 21st day of February, 2019.

7 **ALDRICH LAW FIRM, LTD.**

8 /s/ John P. Aldrich
9 John P. Aldrich, Esq.
Nevada Bar No. 6877
10 Catherine Hernandez, Esq.
Nevada Bar No. 8410
11 1601 S. Rainbow Boulevard, Suite 160
Las Vegas, NV 89146
12 Tel (702) 853-5490
Fax (702) 226-1975
13 *Attorneys for Plaintiff*

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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 21st day of February, 2019, I caused the foregoing
3 **OPPOSITION TO DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S**
4 **MOTION FOR APPOINTMENT OF RECEIVER** to be electronically filed and served with
5 the Clerk of the Court using Wiznet which will send notification of such filing to the email
6 addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not
7 included on the Electronic Mail Notice List, to the following parties:

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

11 Keith Greer, Esq.
12 17150 Via Del Campo, Suite 100
San Diego, CA 92127

13 *Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND*
14 *LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,*
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
15 *JON FLEMING and LINDA STANWOOD*

16 /s/ T. Bixenmann
17 An employee of ALDRICH LAW FIRM, LTD.
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EXHIBIT 1

EXHIBIT 1

1 CASE NO. A-18-781084-B

2 DOCKET U

3 DEPT. XVI

4

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9 FRONT SIGHT MANAGEMENT LLC,)

10 Plaintiff,)

11 vs.)

12 LAS VEGAS DEVELOPMENT FUND LLC,)

13 Defendant.)

14

REPORTER'S TRANSCRIPT
OF
MOTION TO DISMISS

15

16

17 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

20

DATED WEDNESDAY, DECEMBER 5, 2018

21

22

23

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

24

25

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

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

3 MR. GREER: Right.

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

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

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

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

13 MR. ALDRICH: Yeah.

14 THE COURT: Right?

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

17 THE COURT: Yes, we do.

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

21 MR. ALDRICH: The 13th.

22 MR. GREER: Yes, your Honor.

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

24 MR. GREER: Moot.

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

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

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

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

PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR
(702) 671-4402 - CROBERT48@GMAIL.COM
Pursuant to NRS 239.053, illegal to copy without payment.

EXHIBIT 2

EXHIBIT 2



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

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

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

Defendants.

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

THREE DAY NOTICE OF INTENT
TO TAKE DEFAULT

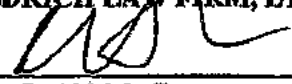
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- TO: LAS VEGAS DEVELOPMENT FUND LLC, Defendant:
- TO: EBS IMPACT CAPITAL REGIONAL CENTER LLC, Defendant:
- TO: EBS IMPACT ADVISORS LLC, Defendant:
- TO: ROBERT W. DZIUBLA, Defendant:
- TO: JON FLEMING, Defendant:
- TO: LINDA STANWOOD, Defendant:
- TO: KATHRYN HOLBERT, ESQ. and C. KEITH GREER, ESQ., Attorneys for Defendants:

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

DATED this 24th day of January, 2019.

ALDRICH LAW FIRM, LTD.




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

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RECEIPT OF COPY

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



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

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

Attorneys for Defendants

EXHIBIT 3

EXHIBIT 3

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

EXPERT WITNESS REPORT OF
CATHERINE DEBONO HOLMES, ESQ.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

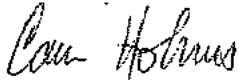
approval process; the EB-5 investors who have funded the construction loan to Borrower may not receive their permanent green cards and will be subject to deportation from the United States — all after having uprooted themselves and their families from their home countries to move to the United States,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

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

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

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

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



CATHERINE DEBONO HOLMES

EXHIBIT A

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

Author:

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

Education:

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

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

EB-5 Industry Associations and Awards:

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

Current Member, Editorial Committee
Past Member, Best Practices Committee

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

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

EXHIBIT B

USCIS

Number of Form I-526 Petitions Filed 2008-2017



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

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

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

D Data withheld to protect applicants' privacy.

- Represents zero.

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

² The number of petitions approved during the reporting period.

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

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

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

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

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

EXHIBIT 4

EXHIBIT 4

Traci Bixenmann

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

Ms. Holbert,

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

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

WE HAVE MOVED! Please note our new address above.

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

Mr. Aldrich-

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

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

Thank you,

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

EXHIBIT 5

EXHIBIT 5

**EB5 Impact Capital
Regional Center, LLC**

EB5 Impact Capital Regional Center, LLC
916 SOUTHWOOD BOULEVARD, SUITE 10
P.O. BOX 3009
INCLINE VILLAGE, NEVADA 89450

Telephone: (844) 888-8028
Facsimile: (858) 332-1755

21 April 2017

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

PROJECT UPDATE
Q1 2017

Dear Investors:

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

EB-5 funds – status: We have disbursed a total of \$2,625,000 in EB5 funds to the Front Sight project since the closing on October 7, 2016. USCIS is now processing I-526s dating from July 28, 2016, so we anticipate that several of our investors will receive their I-526 approval very soon.

Construction Status: FS continues construction on the 25 new training ranges, which cover 60 acres of land and will double the number of ranges. Here is a Dropbox link showing recent pictures of the ongoing construction: <https://www.dropbox.com/sh/p0r1lvaqqd5ybd1/AAAckce3yCNHMM18VZDKZn7a?dl=0>. These pictures show that FS has completed concrete block walls on 16 of the 25 new ranges. They have also completed between-range simulators on each of these 16 ranges. All the shade structure steel has been delivered and is waiting to be installed when the final grading, gravel and railroad ties have been installed.

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

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

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

Please let us know if you have any questions.

Very truly yours,

Las Vegas Development Fund, LLC

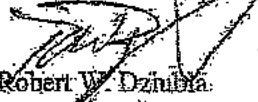

Robert W. Dzimbata
President & CEO

EXHIBIT 6

EXHIBIT 6

EB5 Impact Capital Regional Center, LLC

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

Telephone: (844) 889-8028
Facsimile: (858) 332-4795

19 July 2017

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

PROJECT UPDATE **Q2 2017**

Dear Investors:

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

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

Construction Status: FS has completed about 95% of the construction on the 25 new training ranges. Please use this link to see an aerial video of the construction:
<https://www.dropbox.com/s/nixg55qxdcyp3iw/Drone%20Phase%203%20.mov?dl=0>

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

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

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

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

Very truly yours,

Las Vegas Development Fund, LLC

RW Dziubla

Robert W. Dziubla
President & CEO

EXHIBIT 7

EXHIBIT 7

**EB5 Impact Capital
Regional Center, LLC**

EB5 Impact Capital Regional Center, LLC
96 SOUTHERWOOD BOULEVARD, SUITE 10
P.O. BOX 3006
INCLINE VILLAGE, NEVADA 89450

Telephone: (844) 835-4028
Facsimile: (702) 332-1795

24 October 2017

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

PROJECT UPDATE
Q3 2017

Dear Investors:

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

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

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

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

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

[Handwritten signature]

EB5 Investors in Front Sight Project
24 October 2017
Page 2

EB5 Impact Capital Regional Center, LLC

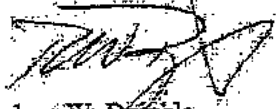
Here is that updated link:

https://www.dropbox.com/s/pvht4lr3t7ie4bk3D%20Frontsight%20HD%20w_msp%202017a.m...p47d1-0

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

Very truly yours,

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



Robert W. Datusla
President & CEO

EXHIBIT 8

EXHIBIT 8

**EB5 Impact Capital
Regional Center, LLC**

EB5 Impact Capital Regional Center, LLC
916 SOUTHWOOD BOULEVARD, SUITE 1G
P.O. BOX 3002
INCLINE VILLAGE, NEVADA 89450
Telephone: (844) 899-8028
Facsimile: (888) 332-4795

10 April 2018

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

PROJECT UPDATE
Q1 2018

Dear Investors:

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

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

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

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

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

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

EB5 Investors in Front Sight Project
10 March 2018
Page 2

EB5 Impact Capital Regional Center, LLC

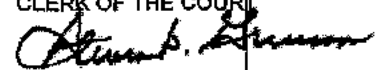
https://www.dropbox.com/s/zpebnnyvcugz836d/Phase%203%20Completion%20%26%20Patriot%20Pavillion%20Construction%20Progress%2001_24_18.mp4?dl=0

Very truly yours,

Las Vegas Development Fund, LLC

RW Dziubla

Robert W. Dziubla
President & CEO



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

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

10 Plaintiff,

11 vs.

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

22 Defendants.
23
24

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

ERRATA TO OPPOSITION TO
DEFENDANT LAS VEGAS
DEVELOPMENT FUND LLC'S
MOTION FOR APPOINTMENT OF
RECEIVER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of February, 2019, I caused the foregoing **ERRATA TO OPPOSITION TO DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S MOTION FOR APPOINTMENT OF RECEIVER** 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

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

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

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

EXHIBIT 2

EXHIBIT 2

DOC #905318

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

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

RECORDING REQUESTED BY
and RETURN TO:

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

SUBSTITUTION OF TRUSTEE

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

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

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

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

Dated: January 4, 2019

Robert Dziubla
Title: President & CEO

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

STATE OF California
COUNTY OF San Diego

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

Amanda Anderberg
Notary Public Amanda Anderberg



DOC #905512

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

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

RECORDING REQUESTED BY
and RETURN TO:

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

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

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

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

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

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

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

Page 1 of 2

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

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

NOTICE

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

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

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

AFFIDAVIT OF AUTHORITY IS ATTACHED HERETO

Kath Holbert
Kathryn Holbert, Esq. Successor Trustee

1-17-2019
Dated

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

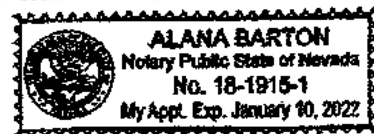
STATE OF NEVADA
COUNTY OF CLARK

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

Alana Barton
Notary Public Alana Barton

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

Page 2 of 2



AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

NRS § 107.080(2)(c)

STATE of CALIFORNIA)

)ss.

COUNTY of SAN DIEGO)

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

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

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

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

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

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

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

AFFIDAVIT OF AUTHORIZATION

Page 1 of 3

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

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

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

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

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

b. The amount in default;

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

d. The amount of accrued interest and late charges,

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

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

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

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

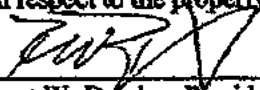
Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded on October 13, 2016, as Document No. 860867 of official records in the Office of the Recorder of Nye County, Nevada; ("Deed of Trust"), which was executed by FRONT SIGHT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

AFFIDAVIT OF AUTHORIZATION

Page 2 of 3

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

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

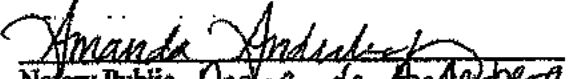

Robert W. Dziuba, President and CEO of beneficiary
LAS VEGAS DEVELOPMENT FUND, LLC

January 4, 2019
Dated

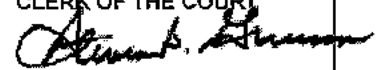
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

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


Notary Public Amanda Anderberg





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

6 ANTHONY T. CASE, ESQ.
7 Nevada Bar No. 6589
8 tcase@farmercase.com
9 KATHRYN HOLBERT, ESQ.
10 Nevada Bar No. 10084
11 kholbert@farmercase.com
12 **FARMER CASE & FEDOR**
13 2190 E. Pebble Rd., Suite #205
14 Las Vegas, NV 89123
15 Telephone: (702) 579-3900
16 Facsimile: (702) 739-3001

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

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

17 FRONT SIGHT MANAGEMENT LLC, a
18 Nevada Limited Liability Company,
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28

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC,
et al.,

Defendants.

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

) **DEFENDANT LAS VEGAS**
) **DEVELOPMENT FUND LLC'S REPLY TO**
) **PLAINTIFF'S OPPOSITION TO**
) **DEFENDANT'S MOTION FOR**
) **APPOINTMENT OF A RECEIVER**

Hearing Date: February 28, 2019
Time: 9:00 a.m.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Plaintiff's opposition merely confirms that Front Sight is in default under numerous
4 provisions of the Construction Loan Agreement ("CLA"). Its sole defense appears to be that
5 because Defendants other than Las Vegas Development Fund, LLC ("LVD Fund" or "Lender"),
6 did not raise more money, Front Sight is not bound by the terms of the CLA with LVD Fund and
7 Front Sight can thus simply take money from EB-5 immigrant investors and do whatever it
8 wants, whenever it wants to, without having to report to anyone. As discussed below, the law
9 holds otherwise.

10 **II. ARGUMENT**

11 **A. Plaintiff's Own Expert's Publication Supports Taking Judicial Action in this
12 Case Based on Plaintiff's Actions.**

13 Plaintiff argues that appointing a receiver is an extreme remedy. However, in a
14 recent publication by Plaintiff's own expert, Catherine DeBono Holmes, entitled "What to
15 Do If You Suspect Your EB-5 Project Is in Trouble" Investment Law Blog (Feb 17, 2017)¹
16 (Greer Decl. Exhibit 1), Plaintiff's expert makes it clear that appointment of a Receiver
17 (or a Special Master pursuant to NRCPC Rule 53) with at least certain limited powers is
18 appropriate in this case. In the article, Ms. Holmes cautions that:

19 "Managers and Investors of EB-5 Investment Funds should regularly monitor their
20 investments in EB-5 Projects and be ready to take protective actions if their EB-5
21 Projects show signs of trouble." [She explains,] "It is vitally important for managers
22 and investors in EB-5 investment funds to stay informed of the status of their EB-5
23 projects, because EB-5 investors must demonstrate that the projects in which they
24 invested were completed and, in some cases, that those projects are operating in
25 accordance with projections, in order to qualify for approval of their I-829 petitions
26 to remove conditions to their residence. If the manager or EB-5 investors in an
27 EB-5 investment fund discover signs that their EB-5 project may be experiencing
28 financial distress or other difficulties that could prevent the project from being

25 ¹ While Plaintiff's "expert statement" is an inadmissible unsworn declaration (See
26 Defendant's Objection and Motion to Strike), to the extent that it is admissible, Defendant's use of
27 Plaintiff's expert, Catherine DeBono Holmes' article, "What to Do If You Suspect Your Eb-5 Project
28 Is in Trouble," is admissible impeachment evidence because it is a prior inconsistent statement under
NRS 50.135. Alternatively, the document is not hearsay under the learned treatise hearsay exception
under NRS 51.255.

1 completed or operated in accordance with the original business plan for the project,
2 the manager, the investors or their representatives need to evaluate whether there
3 are any actions that could be taken to save the project, so that the EB-5 investors
4 will ultimately qualify for approval of their I-829 petitions."

5 Ms. Holmes describes the importance of continuous monitoring of the EB-5 project and
6 its progress stating, "[b]oth managers and investors in EB-5 investment funds should
7 continuously monitor and evaluate the progress of their EB-5 projects, and collect documentation
8 of transfers of EB-5 funds, payments of project expenditures, and other financial records that will
9 be required as part of the I-829 petitions. **An unwillingness to provide such documentation,
10 which is mostly generated in the normal course of business, can be a red flag indicating
11 that something is wrong.**" (Id.) (emphasis added)

12 Ms. Holmes identifies some of the "warning signs that an EB-5 project may be in
13 trouble," *each of which exists here*:

- 14 • Failure of the EB-5 project developer [Front Sight in this case] to deliver regular
15 reports to the EB-5 investment fund manager of the status of the financing,
16 construction and/or operation of the project;
- 17 • Failure of the EB-5 project developer to provide documentation of expenditures
18 and the use of EB-5 funds on a regular basis;
- 19 • Failure of the EB-5 project developer to obtain all necessary financing to
20 commence or complete the project;
- 21 • Failure to deliver required financial and other reports to EB-5 lender and/or EB-5
22 investors;
- 23 • Receipt of notice that litigation has been filed against the EB-5 project or
24 developer; [in this case a Notice of Default]
- 25 • Evidence that the EB-5 project has not commenced or has ceased construction;
- 26 • Failure of the EB-5 project to meet the dates specified in the project construction
27 schedule

28 Ms. Holmes' solution is to hire a "construction monitor and/or accountant" to
investigate, monitor and report on the project. This is essentially what Defendant is seeking in
the form of a Receiver or Special Master to report to the Court in the face of these "red flags"

1 identified in Ms. Holmes' published materials.²

2 The recommended financial monitoring by Ms. Holmes includes many of the same items
3 that LVD Fund has requested - and been refused - in the present case. As noted by Ms. Holmes:
4 "This is often referred to as EB-5 compliance, but can also be thought of as on-going due
5 diligence. These processes are similar to those that would be used by any other private lender or
6 institutional investor in a construction project or business, with the additional focus on job
7 creation in addition to the financial health of the EB-5 project. The following are some of the key
8 components for monitoring an EB-5 project that every EB-5 investment fund should have in
9 place:

- 10 • Conduct regular inspections of the project and review disbursement requests, and
11 if appropriate hire a construction monitor to make the inspections and/or an
12 independent loan servicer to receive reports and payments made by the EB-5
13 project entity to the EB-5 investment fund;
- 14 • Require requests for disbursement of EB-5 proceeds with detailed use of proceeds
15 of each advance, including contractor invoices, architect or engineer certification,
16 lien releases, and other documents (i.e., a draw package or payment application)
- 17 • Require regular construction reports and financial statements from the EB-5
18 project developer;
- 19 • Require that the senior lender provide copies of notices to the NCE concurrently
20 with delivery to the developer;
- 21 • Regularly communicate with the EB-5 project developer to find out as early as
22 possible if problems are developing and if possible work with the developer to
23 help resolve issues before they become a crisis." (Id.)

24 Front Sight has outright refused to allow LVD Fund's construction consultant to inspect
25 the property, has failed to provide the relevant documentation, and has refused to allow access to
26 these records. (Dziubla Decl. ¶¶ 10-17, 18; Dzibula Sup. Dec. ¶¶ 20-23). Therefore, the current
27 motion to appoint a receiver to act - in Ms. Holmes' terms - as a Construction Monitor, is not
28 only appropriate - but according to Front Sight's own expert - is necessary. Accordingly,
Defendant LVD Fund's motion for receivership should be granted.

27 ² To the extent the Court considers the unsworn written statement of Plaintiff's expert, Ms.
28 DeBono Holmes, Defendant Robert Dziubla provides a counter statement, under penalty of perjury,
correcting misstatements of fact made by Ms. Holmes. (Dziubla Sup. Decl., ¶¶ 4-15).

1 **B. Defendants Have a Right to Move for a Receivership Because this is an**
2 **“Action” as Defined in NRS 32.010 and this Court has Jurisdiction over the**
3 **Parties and the Property.**

4 Plaintiff asserts that Defendant cannot bring a motion for receivership because Defendant
5 hasn’t filed a counterclaim in the pending action. However, NRS Chapter 32 (“Receivers”) states
6 otherwise, and gives *any party* the authority to request a receiver who has a probable interest in
7 the property that is the subject of the action. See NRS 32.010(1) (“A receiver may be appointed
8 by the court in which an action is pending . . . on application of the plaintiff, or of **any party**
9 **whose right to or interest in the property or fund, or the proceeds thereof, is probable, and**
10 where it is shown that the property or fund is in danger of being lost, removed or materially
11 injured.”).

12 Here, there is a pending action over a disputed piece of real property. This is evidenced
13 by the fact that LVD Fund filed a Notice of Default and Election to Sell the property, and by this
14 action, Plaintiff disputes Defendant’s right to sell the property. LVD Fund does not need to file
15 an answer or counterclaim to move for the appointment of a receiver, because it can show a
16 probable right to the property. LVD Fund has a contractual right to the property as shown in the
17 Construction Loan Agreement and by the Notice of Default that was filed with the Nye County
18 Recorder. Accordingly, LVD Fund has the right to have the court appoint a receiver under NRS
19 32.010 and the court should grant Defendant’s motion.

20 In addition to NRS 32.010, Defendant has a right to a receiver under the provisions of
21 NRS 32.260. In October 2017, to further clarify and expand upon NRS 32.010, the Nevada
22 Legislature adopted the Uniform Commercial Real Estate Receivership Act. See *BUSINESS*
23 *AND COMMERCE—REAL ESTATE—RECEIVERS AND RECEIVERSHIP*, 2017 Nevada Laws
24 Ch. 232 (A.B. 235); See also NRS 32.260(1) (“The court may appoint a receiver [b]efore
25 **judgment, to protect a party that demonstrates an apparent right, title or interest in real**
26 **property that is the subject of the action. . .**”) NRS 32.260(2) (“ In connection with the
27 foreclosure or other enforcement of a mortgage, **a mortgagee is entitled to appointment of a**
28 **receiver for the mortgaged property if: (a) Appointment is necessary to protect the property**

1 from waste, loss, transfer, dissipation or impairment; (b) The mortgagor agreed in a signed
2 record to appointment of a receiver on default[.]” The language in NRS 32.260 is nearly
3 identical to NRS 32.010, but NRS 32.260 adds clarity by parsing the congested language of
4 32.010. NRS 32.260 clearly states that a receiver may be appointed to protect a party (not only a
5 plaintiff) who has an interest in the property that is subject to the action.

6 Further, Defendant here is entitled to appointment of a receiver where Plaintiff consented
7 to a receiver in Deed of Trust. Since Defendant has an interest in the property that is subject to
8 the action and Plaintiff consented to the appointment of a receiver, this court should grant
9 Defendant’s motion for a receivership.

10 Plaintiff does not cite any relevant authority supporting the contention that a party to a
11 pending action does not have the right to have a receiver appointed to protect its property. In
12 *Gordon v. Washington*, 55 S. Ct. 584, 586 (1935) the court held that where the only cause of
13 action in the complaint was to appoint a receiver, *there was no action*. And if there is no action,
14 there is no jurisdiction. The case was dismissed for failure to state a cause of action because
15 receivership is not a cause of action. Here, *there is a pending action* and Defendant has an
16 interest in the property.

17 In *State (Nenzel) v. Second Judicial Dist. Court in & for Washoe County*, 49 Nev. 145,
18 241 P. 317, 318 (1925) the court made a similar ruling, holding that a singular action for
19 receivership was not enough to initiate an action, and therefore there was no pending action as
20 required by statute. In *Nenzel*, the Plaintiff brought an action against Rochester Silver
21 Corporation to recover a judgment. The next day, Nevada Valley Power, a non-party to the
22 action, brought a complaint for a receivership. The court held that a non-party could not bring a
23 complaint solely for receivership and the action by Nevada Power was dismissed, thus, leaving
24 the court with no jurisdiction, because there was no action.³

25
26 ³ The out of state authority cited by Plaintiff stands for the same notion that an action cannot
27 be maintained without at least one cause of action, because without a cause of action, there is no
28 pending action. *Laumeier v. Sun-Ray Products Co.*, 330 Mo. 542, 553 (1932) (Plaintiff shareholders
could not maintain an action for a receiver without relief sought.) *Houston & B.V. Ry. Co. v. Hughes*,

1 The crux of the argument in all these cases is whether the court had jurisdiction over the
2 subject matter. While every case cited by Plaintiff held that there was no pending action and
3 therefore the court did not have jurisdiction to appoint a receiver, that is not the case here. There
4 is an action pending, the court has jurisdiction over both parties with an interest in the property,
5 and the court has the authority to appoint a receiver to protect any party. As such, this court
6 should grant Defendant's motion to appoint a receiver.

7 **C. If the Court Does Not Wish to Appoint a Receiver with Full Powers it Should**
8 **Consider Appointing a Special Master Pursuant to NRCP Rule 53**

9 In its opposition to the motion, Plaintiff cites *Hines v. Plante*, 99 Nev. 259, 261-262
10 (1983) for the proposition that "[t]he appointment of a receiver *pendente lite* is a harsh and
11 extreme remedy which should be used sparingly and only when the securing of ultimate justice
12 requires it. *Bowler v. Leonard*, 70 Nev. 370, 269 P.2d 833 (1954). A corollary of this rule is that
13 if the desired outcome may be achieved by some method other than appointing a receiver, then
14 this course should be followed." *Hines*, 99 Nev at 261-262 (Plaintiff's Opposition at p. 15)
15 Plaintiff also cites *Bedore v. Familion*, 122 Nev. 5, 11 (2006) for the proposition that "[I]f
16 another remedy is available to achieve the same outcome, the district court should not resort
17 to dissolution or the appointment of a receiver." *Bedore*, 122 Nev. At 11 (Plaintiff's Opposition
18 at p. 15) (emphasis added by Plaintiff).

19 Fortunately, if the court is not inclined to grant a full receivership there is an alternative
20 available in the appointment of a Special Master under NRCP Rule 53. NRCP Rule 53
21 specifically authorizes the court to appoint a Special Master. "NRCP 53(b) authorizes referral to
22 a Special Master for 'matters of account and of difficult computation of damages' or 'upon a
23 showing that some exceptional condition requires it.'" *Venetian Casino Resort, LLC v. Eighth*
24 *Judicial Dist. Court of State ex rel. Cty. of Clark*, 118 Nev. 124, 128 (2002).

25 Plaintiff's own expert in her article, "What to Do If You Suspect Your Eb-5 Project Is in
26 Trouble?" Investment Law Blog, (Feb 17, 2017), discussed *supra*, clearly details what the scope

27 182 S.W. 23, 28 (Tex. Civ. App. 1915) (Plaintiff's single cause of action for receiver based solely
28 on insolvency was not a proper cause of action.)

1 of the Special Master appointment should be, i.e., retain an experienced construction monitor
2 and/or accountant to inspect and analyze the project and related records, and report to the
3 investors. Or in this case, since Front Sight will not permit access to its books and records for
4 such construction monitoring and accounting, the court should appoint a Special Master to
5 conduct such a review and report to the court. This is essential for LVD Fund to meet its
6 fiduciary duty to the EB-5 investors. (Dziubla Supp. Decl. ¶¶ 22-24).

7 “Courts have . . . inherent power to provide themselves with appropriate instruments
8 required for the performance of their duties. This power includes authority to appoint persons
9 unconnected with the court to aid judges in the performance of specific judicial duties, as they
10 may arise in the progress of a cause. From the commencement of our government it has been
11 exercised by the federal courts, when sitting in equity, by appointing, either with or without the
12 consent of the parties, special masters, auditors, examiners, and commissioners. To take and
13 report testimony; to audit and state accounts . . . “ *In re Peterson*, 253 U.S. 300, 310 (1920).
14 “Whether such aid shall be sought is ordinarily within the discretion of the trial judge; but this
15 court has indicated that where accounts are complex and intricate, or the documents and other
16 evidence voluminous, or where extensive computations are to be made, it is the better practice to
17 refer the matter to a special master or commissioner than for the judge to undertake to perform
18 the task himself.” *Id.*

19 Accordingly, as an alternative to appointment of a receiver with full power to assume
20 control of the project, LVD Fund submits that appointment of a Special Master to perform the
21 reviews suggested by Plaintiff’s own expert would be appropriate.

22 **D. The Motion for Appointment of a Receiver Is Not Barred by the Unclean**
23 **Hands Doctrine**

24 Front Sight claims that LVD Fund’s Motion for Appointment of a Receiver is barred by
25 the equitable Unclean Hands Doctrine. In support of this argument, Plaintiff recites its now
26 familiar litany of alleged transgressions by Defendant Dziubla and EB5IA - almost all of which
27 are before the funding of the CLA. Under applicable Nevada law such alleged pre-funding
28 transgressions (even if true which Defendants vigorously deny) simply do not support application

1 of the “unclean hands” doctrine to efforts by Lender to secure collection and security for loan
2 proceeds actually disbursed and willingly accepted by Front Sight.

3 The Nevada Supreme Court examined the proper circumstances for application of the
4 unclean hands doctrine in *Las Vegas Fetish*. The court concluded that “the unclean hands
5 doctrine should only apply when the egregiousness of the party’s misconduct constituting the
6 party’s unclean hands and the seriousness of the harm caused by the misconduct collectively
7 weigh against allowing the party to obtain such a remedy.” *Las Vegas Fetish & Fantasy*
8 *Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 273 (2008). *Las Vegas Fetish*
9 specifically rejected a rule which would require automatic application of the Unclean Hands
10 Doctrine whenever there was any intentional wrongdoing by the party claimed to have unclean
11 hands. “LVFF now relies on *Evans* and our discussion of it in *Banks* to argue that we have
12 established a per se rule, making equitable recovery unavailable to every ‘intentional tortfeasor,’
13 whether or not that tort is connected to the subject matter or transaction in litigation. However,
14 LVFF’s reliance on those cases is misplaced; specifically, LVFF over reaches in its interpretation
15 of *Evans* and *Banks*, and we take this opportunity to clarify the circumstances under which a
16 party’s unclean hands may bar that party from obtaining an equitable remedy.” *Id.* at 276.

17 The *Las Vegas Fetish* Court established a two-part test: “In determining whether a party’s
18 connection with an action is sufficiently offensive to bar equitable relief, two factors must be
19 considered: (1) the egregiousness of the misconduct at issue, and (2) the seriousness of the harm
20 caused by the misconduct. Only when these factors weigh against granting the requested
21 equitable relief will the unclean hands doctrine bar that remedy.” *Id.* at 276. Unclean hands is
22 not intended as a punishment for general bad conduct unrelated to the specific transaction at
23 issue, which here is the CLA. “What does seem clear is that misconduct in the abstract,
24 unrelated to the claim to which it is asserted as a defense, does not constitute unclean hands. The
25 concept invoking the denial of relief is not intended to serve as punishment for extraneous
26 transgressions, but instead is based upon ‘considerations that make for the advancement of right
27 and justice.’ *Keystone Driller Company v. General Excavator Company* (1933), 290 U.S. 240,

1 245.” *Republic Molding Corp. v. B. W. Photo Utilities*, 319 F.2d 347, 349 (9th Cir. 1963).

2 Case law makes clear that the Plaintiff’s allegations herein do not support a claim of
3 unclean hands as it relates to LVD Fund and efforts as the lender to secure collection and security
4 of the loan proceeds. First, essentially all of the allegations of unclean hands predate the
5 acceptance of the loan proceeds and execution of the CLA by Front Sight. In these
6 circumstances, Plaintiff is deemed to have acquiesced in the allegedly wrongful actions - at least
7 as to the acceptance of the loan proceeds - and unclean hands is unavailable. *See, Seller Agency*
8 *Council, Inc. v. Kennedy Ctr. for Real Estate Educ., Inc.*, 621 F.3d 981, 987 (9th Cir.
9 2010)(“unclean hands related explicitly to events that occurred *before* July 12, 2006. SAC’s claim
10 of acquiescence was based on events occurring *after* July 12, 2006”).

11 Moreover, the “unclean hands” must be related to the specific matter at issue between the
12 parties and not merely to general other relations between the parties. *See Gravelle v. Burchett*,
13 73 Nev. 333, 341 (1957)(“The learned trial judge based his order striking the defense upon the
14 ground that the misconduct complained of must be in regard to or in any event connected with
15 the matter in litigation so that it has in some manner affected the equitable relations subsisting
16 between the parties and arising out of the transaction.”) “It is fundamental to [the] operation of
17 the doctrine that the alleged misconduct by the plaintiff relate directly to the transaction
18 concerning which the complaint is made.” *Arthur v. Davis*, 126 Cal.App.3d 684, 693–94, 178
19 Cal.Rptr. 920, 925 (1981) (quotation omitted).

20 As in *Gravelle*, the alleged misconduct by Defendants here had nothing to do with the
21 Lender or with the disbursement of the loan proceeds or the CLA.

22 Moreover, *the Unclean Hands Doctrine is not available where its application would*
23 *cause harm to innocent third parties - in this case the EB-5 Investors.* “The ‘clean hands’
24 maxim has no play in situations where it would result in substantial harm to innocent parties.”
25 *Eaves v. Penn*, 587 F.2d 453, 463 (10th Cir. 1978); *Donovan v. Schmoutey*, 592 F. Supp. 1361,
26 1403 (D. Nev. 1984). Here, application of the unclean hands doctrine to deny the requested relief
27 would place the innocent EB-5 Investors at risk. Thus, the doctrine has no application here.

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