

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 04:35 p.m.  
Dist. Ct. Case No: A-18-781084-B Elizabeth A. Brown  
Clerk of Supreme Court

1                   **PETITION FOR WRIT OF MANDAMUS, OR ALTERNATIVELY,**  
2  
3   **PROHIBITION**

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6   **PETITIONER’S APPENDIX**  
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6	Business Court Order (07/23/2019)	VII	1566-1572
7			
8	Complaint (09/14/2018)	I	0001-0028
9	Counterdefendant Dr. Ignatius Piazza’s Answer to	VIII	1958-1981
10	Counterclaim (09/30/2019)		
11	Counterdefendant Front Sight Management LLC’s	VIII / IX	1982-2005
12	Answer to Counterclaim (09/30/2019)		
13	Counterdefendant Jennifer Piazza’s Answer to	IX	2006-2029
14	Counterclaim (09/30/2019)		
15	Counterdefendant Jennifer Piazza’s Answer to First	XVIII	4360-4386
16	Amended Counterclaim (08/21/2020)		
17	Counterdefendants VNV Dynasty Trust I and VNV	VIII	1933-1957
18	Dynasty Trust II’s Answer to Counterclaim		
19	(09/30/2019)		
20	Declaration of C. Keith Greer in Support of	XIV	3257-3326
21	Defendant and Counterclaimants’ Oppositions to		
22	Jennifer Piazza and the VNV Dynasty Trust I and II		
23	Motions for Summary Judgment (02/03/2020)		
24	Declaration of C. Keith Greer in Support of	IV	0762-0769
25	Defendant LVD Fund’s Reply to Plaintiff’s		
26	Opposition to Defendant’s Motion to Appoint		
27	Receiver (02/26/2019)		
28	Declaration of C. Keith Greer in Support of	III	0559-0601
	Defendant’s Motion for Receivership (02/06/2019)		

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Declaration of C. Keith Greer in Support of Las Vegas Development Fund, LLC’s Motion for Leave to Amend the Countercomplaint (04/04/2020)	XV	3641-3645
Declaration of Robert Dziubla in Opposition to Plaintiff’s Motion for Sanctions (09/30/2019)	IX	2041-2044
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

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

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Notice of Entry of Order Staying All Subpoenas For Documents and Depositions which were Served on Non-Parties by Plaintiff (09/13/2019)	VII	1592-1599
Notice of Entry of Protective Order (11/27/2018)	I	0080-0098
Notice of Entry of Stipulation and Order (12/18/2019)	XII	2841-2846
Notice of Entry of Stipulation and Order Regarding Defendants’ Judicial Foreclosure Cause of Action (06/25/2019)	VI	1325-1330
Notice of Entry of Stipulation and Order Regarding Exhibit (12/6/2019)	XII	2801-2816
Notice of Entry of Stipulation and Order Resetting Hearings and Briefing Schedule (02/25/2020)	XIV	3386-3391
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (09/02/2020)	XVIII	4390-4403
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines and Continue Trial (Second Request) (05/13/2020)	XVII	4046-4056
Notice of Entry of Stipulation and Order to Replace Exhibit “A” to Defendant’s Motion for Leave to Amend the Countercomplaint <i>[redacted in district court filing]</i> (04/20/2020)	XV / XVI	3693-3891
Notice of Intent to Issue Subpoena to Bank of America, N.A. (10/22/2019)	X	2379-2459
Notice of Intent to Issue Subpoena to Lucas Horsfall, LLP (10/22/2019)	X	2298-2378

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)		

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

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**TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

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**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

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

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

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

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

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

**THIRTIETH AFFIRMATIVE DEFENSE**

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

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

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

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**THIRTY-SECOND AFFIRMATIVE DEFENSE**

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

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

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

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

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

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

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

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

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

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

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



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

4 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

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

7 **PRAYER FOR RELIEF**

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

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

14 Dated this 30<sup>th</sup> day of September, 2019.

15 **ALDRICH LAW FIRM, LTD.**

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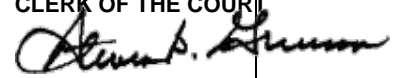
1 **CERTIFICATE OF SERVICE**

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

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

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

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19 /s/ T. Bixenmann  
20 An employee of ALDRICH LAW FIRM, LTD.  
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**ANS**  
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Nevada Bar No. 6877  
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*Attorneys for Plaintiff/Counterdefendants*

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

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

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

vs.

**COUNTERDEFENDANT**  
**JENNIFER PIAZZA'S ANSWER TO**  
**COUNTERCLAIM**

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

\_\_\_\_\_  
AND ALL RELATED COUNTERCLAIMS.  
\_\_\_\_\_

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

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1 **GENERAL DENIAL**

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

5 **ANSWER TO COUNTERCLAIM**

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

8 **I.**

9 **PARTIES**

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

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

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

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

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6. Answering Paragraph 6 of the Counterclaim, this answering Counterdefendant states that she is without knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein and, therefore, denies the same.

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

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

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

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

**II.**

**GENERAL ALLEGATIONS**

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

12. Answering Paragraph 12 of the Counterclaim, this answering Counterdefendant states that there are no allegations against her in this paragraph, and thus she need not answer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90. Answering Paragraph 90 of the Counterclaim, this answering Counterdefendant states that there are no allegations against her in this paragraph, and thus she need not answer



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

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

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

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

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

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

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

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1 **AFFIRMATIVE DEFENSES**

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

6 **FIRST AFFIRMATIVE DEFENSE**

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

9 **SECOND AFFIRMATIVE DEFENSE**

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

12 **THIRD AFFIRMATIVE DEFENSE**

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

16 **FOURTH AFFIRMATIVE DEFENSE**

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

19 **FIFTH AFFIRMATIVE DEFENSE**

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

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**SIXTH AFFIRMATIVE DEFENSE**

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

**SEVENTH AFFIRMATIVE DEFENSE**

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

**EIGHTH AFFIRMATIVE DEFENSE**

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

**NINTH AFFIRMATIVE DEFENSE**

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

**TENTH AFFIRMATIVE DEFENSE**

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

**ELEVENTH AFFIRMATIVE DEFENSE**

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

**TWELFTH AFFIRMATIVE DEFENSE**

Counterclaimant has failed to mitigate its damages.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

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

**FOURTEENTH AFFIRMATIVE DEFENSE**

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

**FIFTEENTH AFFIRMATIVE DEFENSE**

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

**SIXTEENTH AFFIRMATIVE DEFENSE**

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

**SEVENTEENTH AFFIRMATIVE DEFENSE**

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

**EIGHTEENTH AFFIRMATIVE DEFENSE**

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

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**NINETEENTH AFFIRMATIVE DEFENSE**

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

**TWENTIETH AFFIRMATIVE DEFENSE**

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

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

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**TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

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**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

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

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

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

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

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

**THIRTIETH AFFIRMATIVE DEFENSE**

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

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

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

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**THIRTY-SECOND AFFIRMATIVE DEFENSE**

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

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

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

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

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

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

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

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

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

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

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



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

4 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

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

7 **PRAYER FOR RELIEF**

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

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

14 Dated this 30<sup>th</sup> day of September, 2019.

15 **ALDRICH LAW FIRM, LTD.**

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

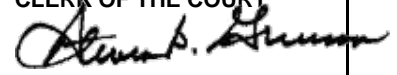
1 **CERTIFICATE OF SERVICE**

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

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

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

17  
18 /s/ T. Bixenmann  
19 An employee of ALDRICH LAW FIRM, LTD.  
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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  
)  
) **DEFENDANT EB5 IMPACT ADVISORS**  
) **LLC'S OPPOSITION TO PLAINTIFF'S**  
) **MOTION FOR SANCTIONS**

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

\_\_\_\_\_  
AND ALL RELATED COUNTERCLAIMS  
\_\_\_\_\_

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

8 **I. INTRODUCTION**

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

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

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

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

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

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

13 **II. ARGUMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

15 A. No.”

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

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

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

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

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

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

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

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

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

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

6 Plaintiff seeks extremely severe sanctions of striking the Defendant’s Answer and  
7 Counterclaim, imposing an adverse evidentiary inference, and ordering monetary sanctions equal  
8 to the entire amount of money paid by Front Sight to Defendant (approximately \$336,000).

9 Before the court may impose such severe sanctions “a somewhat heightened standard of review  
10 should apply.” *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92 (1990). Any such severe  
11 sanction order must “be supported by an express, careful and preferably written explanation of  
12 the court’s analysis of the pertinent factors.” *Id.*; *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d  
13 1042, 1048 (2010)(“heightened standard of review applies where the sanction strikes the  
14 pleadings . . . Under this somewhat heightened standard, the district court abuses its discretion if  
15 the sanctions are not just and do not relate to the claims at issue in the discovery order that was  
16 violated.”)

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

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

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

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

9 **III. CONCLUSION**

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

13 Dated: September 30, 2019

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

16  
17 /s/Kathryn Holbert  
Kathryn Holbert, Esq.  
Attorney for Defendants

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**CERTIFICATE OF SERVICE and/or MAILING**

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

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

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

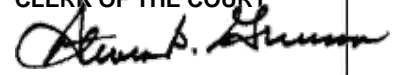
John P. Aldrich, Esq.	Attorneys for Plaintiff
Catherine Hernandez, Esq.	FRONT SIGHT MANAGEMENT, LLC
ALDRICH LAW FIRM, LTD.	
1601 S. Rainbow Blvd., Suite 160	
Las Vegas, Nevada 89146	

By:

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

Dated: September 30, 2019

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



1 **OPP/MTN**  
ANTHONY T. CASE, ESQ.  
2 Nevada Bar No. 6589  
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8 Attorneys for Defendants  
LAS VEGAS DEVELOPMENT FUND LLC, EB5  
9 IMPACT CAPITAL REGIONAL CENTER LLC,  
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,  
JON FLEMING and LINDA STANWOOD

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

12 FRONT SIGHT MANAGEMENT LLC, a ) CASE NO.: A-18-781084-B  
13 Nevada Limited Liability Company, ) DEPT NO.: 16  
14 Plaintiff, )  
15 vs. ) **DECLARATION OF ROBERT DZIUBLA IN**  
OPPOSITION TO PLAINTIFF'S MOTION  
16 LAS VEGAS DEVELOPMENT FUND LLC, ) **FOR SANCTIONS**  
et al., )  
17 Defendants. ) Hearing Date: October 23, 2019  
Time: 9:00 a.m.  
18 )  
19 **AND ALL RELATED COUNTERCLAIMS** )  
20 )

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1 STATE OF CALIFORNIA )

2 ) ss:

3 COUNTY OF SAN DIEGO )

4

5 Affiant, hereby states and declares as follows:

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

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

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

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

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

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

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

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

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

  
Robert Dziubla



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**CERTIFICATE OF SERVICE and/or MAILING**

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

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

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

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

By:

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

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

Dated: September 30, 2019

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

1 CASE NO. A-18-781084-B

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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\* \* \* \* \*

9 FRONT SIGHT MANAGEMENT LLC, )

10 Plaintiff, )

11 vs. )

12 LAS VEGAS DEVELOPMENT FUND LLC, )

13 Defendant. )

14 ----- )

15

REPORTER'S TRANSCRIPT  
OF  
MOTIONS

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

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DATED WEDNESDAY, OCTOBER 9, 2019

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

25

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FARMER, CASE & FEDOR

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12 PRO HAC VICE:

13

GREER & ASSOCIATES

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APPEARANCES CONTINUED:

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1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 9, 2019

2 1:27 P..M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5

6 THE COURT: All right. Good afternoon.

7 IN UNISON: Good afternoon, your Honor.

8 THE COURT: And let's go ahead and place our  
9 appearances on the record.

10 MR. ALDRICH: Good afternoon, your Honor.

11 John Aldrich on behalf of plaintiff.

12 MS. HOLBERT: Good afternoon, your Honor.

13 Kathryn Holbert on behalf of defendants.

14 MR. GREER: Keith Greer on behalf of  
15 defendants. Also here with Robert Dziubla.

16 THE COURT: All right. And before we get  
17 started, there's one issue I just wanted to kind of  
18 address and decide what to do with it.

19 Mr. Aldrich, I have your ex parte motion for  
20 an order shortening time on plaintiff's motion to  
21 extinguish the LVDF's deed of trust or in the  
22 alternative grant senior debt lender Romspen a first  
23 lien position.

24 And the reason why I'm only bringing it up,  
25 what should we do with this? Because this is a motion

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1 for order shortening time. It's my understanding don't  
2 we have it pending also? Has it been filed yet?

3 MS. HOLBERT: It has been filed and, I  
4 believe, it was set for hearing on November 5.

5 THE COURT: That's my question. And so it's  
6 like having two -- you can't have two filings. Do you  
7 want -- do you want to potentially advance one or what  
8 do you want to do?

9 MR. ALDRICH: I'm not sure what the Court  
10 means by I have two files. We filed the motion.

11 THE COURT: Right.

12 MR. ALDRICH: And then I sent it down with an  
13 order shortening time asking to move the hearing date  
14 from when it is set. I don't remember if it was  
15 November 5th or the 15th, but it was -- I want to say  
16 it was five weeks from when it went out there.

17 THE COURT: Right.

18 MR. ALDRICH: So we would like to have it  
19 heard sooner than that. We already have a hearing on  
20 the 23rd.

21 THE COURT: Well, that's my question. And we  
22 can maybe deal with that administratively now.

23 And this is kind of -- this is what I do with  
24 issues like that. I think -- because one of the things  
25 you want to do is you want to make sure you have

1 consistency.

2           So once something is set, I don't move it;  
3 right? If you want to file a motion to advance it, you  
4 can do that. But I think once it's set, I don't think  
5 the Court can sua sponte start moving stuff around. I  
6 don't do that. I never have.

7           So -- so the -- and the only reason why I  
8 brought it in today, maybe it should be advanced to the  
9 23rd. I don't know. But I don't think an ex -- I  
10 think an order shortening time after the fact is kind  
11 of having the Court advance the things and move the  
12 calendar around, without the input of adverse counsel.

13           MR. ALDRICH: So is the Court saying that I  
14 should move for an order shortening time before I file  
15 the motion?

16           THE COURT: No, it would have -- well,  
17 probably because that's how things are typically run,  
18 right?

19           MS. HOLBERT: Right.

20           THE COURT: You get your order shortening  
21 time. I sign it. I give you a date, and we set it.  
22 But see, once it's set, it's set.

23           And I think procedurally the best way to  
24 handle that would be like a motion to advance, but  
25 since you're here, I said I'd bring it up, and maybe

1 there's no opposition to just put it -- move it to the  
2 23rd.

3 MR. ALDRICH: Okay. I just wasn't going to --  
4 the reason I did it that way is because --

5 THE COURT: Well, it doesn't matter. It  
6 doesn't matter.

7 MR. ALDRICH: I know some things changed, but  
8 what I've had happen is when I sent down an order  
9 shortening time and the motion hadn't been filed yet,  
10 it gets sent back to me saying send me a file stamped  
11 copy. Well, when I do it, I guess, maybe what I need  
12 to do is not request a hearing when I file it.

13 THE COURT: Right. Yeah.

14 MR. ALDRICH: Okay. So I'll do that in the  
15 future. That's fine.

16 I mean, certainly I'd love to have it heard on  
17 the 23rd. It was filed last Friday.

18 THE COURT: Is there any opposition to that?

19 MR. GREER: Your Honor, we do. We're going to  
20 need time to respond. This whole thing with now the  
21 timing -- like our motion is due ten days after you get  
22 them or 14 days?

23 THE COURT: Ten days.

24 MS. HOLBERT: Right. And it's ten straight  
25 days now, which makes it, you know, like, five



1 calendar -- five business days.

2 MR. ALDRICH: Which makes it due next Monday.

3 THE COURT REPORTER: I need one at a time.

4 THE COURT: One at a time.

5 MR. GREER: So Monday is a Court holiday, so  
6 due Tuesday; right?

7 MR. ALDRICH: If Monday is a Court holiday,  
8 then it would be Tuesday.

9 THE COURT: So next Tuesday as well.

10 (A discussion was held off record.)

11 MR. ALDRICH: I don't think that's a state  
12 court holiday.

13 MR. GREER: Not here in Nevada. So we're  
14 going to be jammed.

15 THE COURT: So if it's due on the 14th, why  
16 couldn't we hear it the next following week?

17 MR. GREER: Here's -- I may have a conflict,  
18 your Honor, is a problem. We'll be starting trial on  
19 the 15th. And so the 23rd is going to be a challenge  
20 for me. The 5th I should be done by. That's an  
21 important motion.

22 Your Honor, also it's -- that should be --

23 THE COURT: But, you know what, this is why I  
24 do everything in open court. Right?

25 MR. GREER: Right.

1 MS. HOLBERT: Right.

2 MR. GREER: Here's -- we think that this  
3 really is relevant to the pending motion to appoint a  
4 receiver, and for relief from the preliminary  
5 injunction. And so we'd actually like to have that  
6 resolved relatively quickly.

7 I'm just concerned the 23rd is not going to  
8 work for me.

9 MR. ALDRICH: We have two hearings set on that  
10 day already.

11 MR. GREER: So is that -- those are -- what do  
12 we have, motion to squash?

13 MS. HOLBERT: I think motion for sanction,  
14 motion to compel; right?

15 MR. ALDRICH: That's right.

16 MR. GREER: So that would be --

17 MS. HOLBERT: Yeah, well --

18 (A discussion was held off record.)

19 MR. GREER: I won't know until Friday when the  
20 Court -- we have trial call. And when the Court sets  
21 this up.

22 And then I may be fortunate to get a courtroom  
23 to start on that date for trial, in which case I'm -- I  
24 don't have to even worry about, but I don't know until  
25 Friday.

1 THE COURT: Okay. Should we go back on the  
2 record?

3 MR. GREER: You want to put it on the 23rd?  
4 And -- because if I'm going to have to move, I'm going  
5 to have to move everything.

6 THE COURT: How about that, Mr. Aldrich?

7 MR. GREER: Yeah.

8 THE COURT: We'll just put it on the 23rd.  
9 And if -- we'll know Friday if it has to be moved or  
10 not. If it has to be moved because of trial and that  
11 that type of stuff, we will just move it.

12 MR. ALDRICH: So I have no problem with the  
13 23rd. That's great. I just want to point out, and  
14 I -- I understand Mr. Greer's schedule, so -- and I  
15 understand how that works because I have the same  
16 issues sometimes.

17 THE COURT: Yes.

18 MR. ALDRICH: But I just want to note that the  
19 Court has expressed concern that this is taking a long  
20 time and has expressed a desire to have us try the case  
21 in January or thereabouts, which I'm sure we'll talk  
22 about in a minute.

23 THE COURT: January or February. Sometime  
24 after the first of the year.

25 MR. ALDRICH: Sooner than October or whatever

1 it's set for.

2 THE COURT: Yes. It could be June maybe, but  
3 sooner than October.

4 MR. ALDRICH: That would still be a lot  
5 sooner.

6 THE COURT: Yes.

7 MR. ALDRICH: I just want to make sure that  
8 there's an understanding here that these are important  
9 motions for me and for getting discovery that are going  
10 to be heard on the 23rd. So I understand if they have  
11 to get moved, they have to get moved. But that cannot  
12 count against me as we're trying to move forward.

13 MR. GREER: Your Honor, he's already got two  
14 months against him. I'll take a week.

15 THE COURT: All right.

16 Mr. Aldrich, I don't think -- I can't think of  
17 any reason why I would count that against you. I mean,  
18 really. I mean, because this case -- let's keep it how  
19 it is.

20 This case is very unique. There's a lot of  
21 unique issues. We're in a very unique procedural  
22 posture. We can all agree, right?

23 And I can't sit back and say anyone involved  
24 in this litigation has even a scintilla of dilatory  
25 conduct. In fact, it's been very aggressive, you know.

1 So that's a nonissue. It really isn't.

2           So -- but just as important, too,  
3 historically, I do get that we can't circumvent due  
4 process. I understand that aspect too.

5           All I'm trying to figure out on some level,  
6 efficiency; right? That's, really and truly, what it  
7 all comes down to. Because we have spent a lot of time  
8 together. I can't think of any case I've ever had  
9 other than -- I mean, yeah, I have had some complex  
10 cases that have gone to trial where we've had maybe a  
11 month of pretrial motions. I've had that in a few  
12 cases.

13           But I can't think of any cases where I've  
14 had -- and this isn't meant in a negative way -- where  
15 I've had prolonged serial law and motion like I have in  
16 this case. If you understand what I mean.

17           MR. GREER: Yeah. So we have no objection  
18 putting it on the 23rd.

19           MR. ALDRICH: Okay.

20           MR. GREER: And hopefully we can get here on  
21 the 23rd.

22           THE COURT: Yeah.

23           MR. GREER: We'd like to have this heard as  
24 quickly as possible.

25           THE COURT: Okay. That's what we'll do. You

1 can see why I handled it the way I do handle it. And I  
2 kind of do that because it just seems to me from a  
3 judicial philosophical perspective, I do -- I do  
4 everything in open court, even when I have unopposed  
5 motions. I don't grant anything until I'm in open  
6 court. I find that that saves time. It just does.

7 And think about it, I just saved a lot of time  
8 here today by handling it the way I did.

9 MR. ALDRICH: And I -- my client appreciates  
10 it and we appreciate the accommodation to have it heard  
11 on the 23rd.

12 THE COURT: Right. Right. So what we'll do  
13 then, and I just want to make sure we have the --  
14 because this has been filed, it's my understanding.  
15 And what date is that set for?

16 MS. HOLBERT: Your Honor, I just  
17 double-checked. It actually was set for 10-13.

18 MR. ALDRICH: 11-13.

19 MR. GREER: 11-13.

20 MS. HOLBERT: 11-13, sorry.

21 THE COURT: 11-13. Oh, yeah, there you go.

22 So what we'll do as far as plaintiff's motion  
23 to extinguish the LVDF deed of trust, et al, we'll go  
24 ahead and we'll move that to the 23rd. And what we'll  
25 do today if you remind me, we can have a status check,

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1 say maybe Friday 1:00 telephonically, just to see where  
2 you're at and you can let us know. And we can handle  
3 it that way. That way we don't have to -- we want  
4 efficiency.

5 MR. GREER: Very good.

6 THE COURT: That's all I'm looking for. But  
7 remind me to set -- maybe we'll set that right now  
8 before we forget.

9 What do we have Friday? We're in trial,  
10 right?

11 THE COURT CLERK: Starting at 9:30, all day.

12 THE COURT: Okay. What do you -- what would  
13 be a good time to have a telephonic status check on  
14 that?

15 MR. GREER: Probably late afternoon. In  
16 Los Angeles, you go on the wheel, you don't know where  
17 you're going to wind up. It takes sometimes the better  
18 time of the day to get a Court.

19 THE COURT: Would 4:00 o'clock be safe?

20 MR. GREER: 4:00 would be fine.

21 MR. ALDRICH: I'm around, that's fine.

22 THE COURT: And you don't have to come down  
23 for it. We'll have you call in on CourtCall.

24 MR. ALDRICH: Sure.

25 THE COURT: Because I should be on day two in

1 jury selection at the time.

2           So we'll put that at 4:00, and we'll put it on  
3 calendar. And so what we'll do is -- do we have the  
4 CourtCall information?

5           THE COURT CLERK: We do.

6           THE COURT: We'll use CourtCall. We'll make  
7 sure you get copies of everything.

8           MS. HOLBERT: Thank you.

9           MR. GREER: Your Honor, just a question on  
10 that, then, too, because right now I don't know if the  
11 Court -- is the Court planning on ruling today on the  
12 pending motion for receiver and relief from the  
13 preliminary injunction? Because if the Court isn't, I  
14 think that the issues that are presented here with this  
15 alleged any financing and the concessions that Front  
16 Sight is asking LVD Fund to make and to make this  
17 happen, it all -- we believe it ties together and  
18 supports the need for a receiver. So what I'd like to  
19 ask is that -- we put that on calendar for -- maybe for  
20 further hearing. Would that work? On the 23rd?

21           Unless the Court is prepared today to say,  
22 Yes, let's put a receiver on board, in which case we  
23 won't need it.

24           THE COURT: Mr. Aldrich?

25           MR. ALDRICH: I mean, we are -- we argued the



1 motion for receiver already, but --

2 THE COURT: Maybe there is something I need to  
3 hear in your motion that would help guide me.

4 MR. ALDRICH: I mean, we're going to be here.  
5 So, I guess, I would call it a soft objection, but  
6 really what is it? If it's going to come up anyway,  
7 it's going to come up, anyway. So I'm here.

8 THE COURT: I'll delay -- I'll defer the  
9 ruling until after I hear your motion.

10 MR. ALDRICH: Okay.

11 THE COURT: Is that what you want, sir?

12 MR. GREER: Actually after you hear our  
13 opposition.

14 THE COURT: Yeah.

15 MR. GREER: Because --

16 THE COURT: Motion and opposition. And we'll  
17 just move it to that day so you don't have to be here.

18 MR. ALDRICH: There is not necessarily  
19 opposition maybe.

20 (A discussion was held off record.)

21 MR. GREER: Yes, your Honor.

22 THE COURT: Sir.

23 MR. GREER: Just -- was the Court going to  
24 issue a ruling today on that?

25 THE COURT: No.

1 MR. GREER: Good. Thank you.

2 You're in hot water.

3 THE COURT: No. All right.

4 This is the case that keeps on going.

5 So where do we need to continue from? Where  
6 do we start off at?

7 MR. ALDRICH: Today we have defendant's motion  
8 to bifurcate. We have -- both sides have motions to  
9 quash subpoenas to third parties.

10 We've got a discussion of the Rule 65(a)(2)  
11 notice. And a supplemental Rule 16 conference, I  
12 guess, related to the counter-defendants.

13 MS. HOLBERT: Yeah. And there is actually a  
14 status check regarding setting continued preliminary  
15 injunction hearing.

16 THE COURT: There's a lot.

17 MS. HOLBERT: But all of that relates to  
18 calendaring things.

19 THE COURT: Yes.

20 MR. ALDRICH: So there was some discussion  
21 among counsel before. There was some concern about how  
22 long those subpoena -- motions to quash the subpoenas  
23 may take.

24 So if it pleases the Court, we can start with  
25 the motion to bifurcate and then have a discussion

1 about the Rule 65(a)(2) notice. And then handle the  
2 rule -- supplemental Rule 16 conference before we do  
3 the motions to quash.

4 Does that seem fair?

5 MR. GREER: Yes.

6 MS. HOLBERT: Yeah.

7 THE COURT: All right. That's what we'll do.

8 And that's for Friday at 4:00. That's the  
9 CourtCall instructions so both of you have that.

10 MR. GREER: Thank you.

11 THE COURT: So we're dealing with the motion  
12 to bifurcate right now; is that correct?

13 MR. ALDRICH: Yes.

14 MR. GREER: Yes, your Honor.

15 THE COURT: Okay. I got you.

16 (Brief pause in proceedings.)

17 THE COURT: I'm ready when you are.

18 MR. GREER: Yes, your Honor.

19 THE COURT: Yes.

20 MR. GREER: Our argument here, your Honor,  
21 very short, concise. We've laid it out in our papers.  
22 I have little to add.

23 This case involves two separate contracts:  
24 The February 2013 engagement letter, the October 2016  
25 construction loan agreements.

1 Different parties involved with each. The  
2 loan agreement involving Las Vegas Development Fund  
3 solely. EB5 Impact Capital Advisors being the  
4 principal defendants in the engagement letter case.

5 So we have different contracts. Different  
6 parties. Because of the contractual provisions of the  
7 construction loan agreement, all issues relating to  
8 that are to be heard by your Honor as both parties  
9 waived jury.

10 Conversely, there's no such provision in the  
11 engagement letter. Remember the engagement letter  
12 involves allegations of fraudulent inducements,  
13 misrepresentation -- mispending of funds,  
14 misallocation of funds, et cetera; whereas, the  
15 construction loan agreement very, very simple.  
16 Borrower lender arrangement.

17 Las Vegas Development Fund got the money to  
18 Front Sight. Front Sight breached every single  
19 provision as we've laid out in the construction loan  
20 agreement, including the monetary breaches. We just  
21 gave your Honor today supplemental notice of default.  
22 Notice of default that was filed by Las Vegas  
23 Development Fund to -- sent to Front Sight a few days  
24 ago confirming that they are, again, in monetary  
25 default for failing to make the interest payment for

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1 this month.

2           We have EB5 investors that are involved in the  
3 construction loan case. Time is of the essence for  
4 them. You know, this process is set up so that lenders  
5 that are secured and construction loans can quickly  
6 resolve the matter and not be dragged out, all the  
7 typical type of things that distract the litigants in  
8 traditional business litigation.

9           By bifurcating the two cases, we allow the  
10 construction loan case to go forward quickly, hopefully  
11 winding up eventually with relief from the preliminary  
12 injunction and a nonjudicial foreclosure, or in the  
13 alternative, perhaps at this time the loan -- proposed  
14 loan agreement with Front Sight is actually real.  
15 Perhaps a resolution of the case between the parties,  
16 but either way it just makes sense to bifurcate at this  
17 point in time.

18           The key element the Court, I think, should  
19 consider that was attached as Exhibit 1 to my  
20 declaration is the May 12, 2016, email from Robert  
21 Dziubla to the principals at Front Sight, laying out,  
22 saying, Hey, we're not going to make the amounts of  
23 money that was anticipated. 70 million is not going to  
24 come. 50 million is not going to come. We have a  
25 decision to make now. Do we walk away from each other?

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1 Give the money back to the investors? Do we sell the  
2 resource center to you, you go on your own? Or do we  
3 get rid of the limits that were set previously and  
4 let's just lend the money that is there and move  
5 forward knowing that the expectations from the past are  
6 not going to be met.

7           At that time Front Sight decided to go  
8 forward. That is the perfect place to put the dividing  
9 line between these two cases. From that point forward,  
10 there are no misrepresentations even alleged because  
11 all of the statements in the past about what was going  
12 to be achieved and what money was going to be raised  
13 ended as of May 12, 2016. The parties went through  
14 with no expectations at that point in time.

15           Just knowing that LVD Fund was going to lend  
16 the money. Front Sight was going to be the borrower.  
17 And from that point forward, the monies that were going  
18 to be paid to LVD Fund for raising the funds were going  
19 to be progress payments, such that whenever LVD Fund  
20 was able to get an investor to put money into the  
21 escrow. When that money was released from the escrow  
22 to Front Sight, Front Sight would pay the fee.

23           That was it. It was a paid-in-place situation  
24 at that point in time. And there's just the two very,  
25 very distinct cases, different lives and different

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1 interests in both sides. And the compelling interest  
2 here is that the construction loan agreement is just  
3 that: A construction loan agreement to -- it involves  
4 EB5 investors where time is of the essence.

5 Remember, the completion date for this project  
6 was October 4. So we're now done with the project.  
7 We're done with -- the time to complete it is done.  
8 And according to Mr. Piazza's testimony on the stand,  
9 they haven't even prepared plans for the vertical  
10 structures.

11 So we really need to get things rolling on the  
12 construction lending side and not with these EB5  
13 investors in jeopardy.

14 I will note that the case, Mr. Aldrich brings  
15 it up, Front Sight has brought forth some hearsay  
16 evidence recently alleging that there have been enough  
17 jobs created already, such that EB5 investors don't  
18 matter. They should be filing their papers now.

19 Well, looking at the law, this is what we  
20 don't allow hearsay where hearsay shouldn't be allowed.  
21 The problem there is that there's a fundamental fact  
22 that Mr. Evans, Front Sight's economist, relied upon,  
23 which doesn't exist here. And that is the only way  
24 that Front Sight can get credit for jobs created from  
25 the date they chose, which was the date of the

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1 engagement letter back in 2011, is if there was a  
2 bridge loan.

3           A bridge loan is used to create the jobs and  
4 do the construction prior to the time that the EB5  
5 monies is received. The builder, the investors, can  
6 get credit for that. There is no bridge loan here.  
7 There's no evidence of a bridge loan, and that's why  
8 the economy -- the economist report from Mr. Evans is  
9 just worthless in this case.

10           So it's ridiculous to think that if the EB5  
11 investors were in a situation where they could get  
12 their cards, they would have done so already.  
13 Mr. Dziubla, that his responsibility to say on top of  
14 that; the investors' responsibility to file the  
15 paperwork. But there's just no evidence before the  
16 Court that's admissible that supports Front Sight's  
17 contention that EB5 doesn't matter anymore.

18           THE COURT: Thank you, sir.

19           MR. ALDRICH: Good afternoon, your Honor.

20           I also set forth my position in the pleadings,  
21 and I'm sure the Court has reviewed those. I've got a  
22 couple of comments based on what Mr. Greer said, and  
23 I'll highlight some of the things in my brief.

24           The first is, is that Mr. Greer made the  
25 statement today that Front Sight had not made its



1 payment for October. I did not ask my client for proof  
2 of that today, and I can get it if I need it, but my  
3 understanding is the payment was made for October.

4 MR. GREER: Hold. Time out. Time -- now,  
5 your Honor. I misread -- I misread the record. They  
6 have -- they made the regular interest. They didn't  
7 make the default interest.

8 MR. ALDRICH: Okay.

9 MR. GREER: I stand corrected. Stand  
10 corrected.

11 MR. ALDRICH: There we go.

12 THE COURT: And I understand that's in  
13 dispute.

14 MR. ALDRICH: Correct. The default interest  
15 amount is in dispute.

16 And I will note at the last hearing we asked  
17 for the calculation of the default interest and hadn't  
18 received it. I've sent two emails and made a phone  
19 call -- actually Mr. Greer called me. We talked about  
20 it. And today I still don't have it. I have no  
21 calculation of what that default interest is. I asked  
22 for June, July, and August, and I don't have it.

23 So, anyway, it goes to a lot of other things  
24 we've been asking for, but we'll talk about that on the  
25 23rd.

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1           Now, with regard to the motion to bifurcate,  
2 for good reason the defendants are asking the Court to  
3 ignore the fraud allegations. There's a good reason  
4 for that. Because there isn't -- there aren't two  
5 distinct agreements here. I mean, there are two  
6 agreements, but they're not unrelated. They're  
7 absolutely related.

8           Mr. Greer says they're separate parties,  
9 except that Mr. Dziubla owns -- he's the CEO and owner  
10 of all the entities involved. EB5 IA, EB5 Impact  
11 Capital, the regional center, Las Vegas Development  
12 Fund, he's the underlying piece.

13           Interestingly enough, we have -- while I'm  
14 still going to continue to complain that I don't have  
15 all the evidence I need from the other side, we do have  
16 some testimony because we've been here several days.  
17 Among the things that Mr. Dziubla said was that once  
18 the construction loan agreement was signed, Las Vegas  
19 Development Fund assumed primary role of marketing, but  
20 the problem with that is that he continued to take  
21 money from Front Sight through EB5 IA, the alleged  
22 marketing entity, for a long time after October of  
23 2016. Well, then we also learned that Mr. Dziubla  
24 stopped marketing the project all together at the end  
25 of 2017, yet continued to accept tens of thousands of

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1 dollars from Front Sight allegedly for marketing well  
2 into 2018.

3           How is that not continuing fraud? And that --  
4 I mean, I could go on, but that's -- that's the easy  
5 low-hanging fruit.

6           We also heard from Dr. Piazza when he was here  
7 to testify about this May 12 of 2016 email that the  
8 defendants point to as being the smoking gun, except  
9 that Dr. Piazza explained what happened there.

10           They had a meeting a few days later.  
11 Mr. Dziubla and Mr. Fleming came hat in hand looking  
12 like homeless people begging for more money and saying,  
13 We need to remove the minimum raise, but once we do  
14 they're all lined up. We're ready to go.

15           That's additional fraudulent inducement well  
16 beyond that May 12 of 2016 email.

17           I could go on. I won't belabor it too much  
18 right now, but those facts show that this is a  
19 continuing fraud.

20           Now, there are the causes of action. The  
21 plaintiff has causes of action for fraud and  
22 intentional misrepresentation, conversion, civil  
23 conspiracy, breach of contract, breach of the implied  
24 covenant of good faith and fair dealing, intentional  
25 interference with prospective economic advantage, and

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1 negligent misrepresentation. There are also  
2 counterclaims that are for intentional interference  
3 with contractual relationships, conversion, civil  
4 conspiracy, judicial foreclosure, and waste.

5 Now, I've walked through in my brief and  
6 talked about bifurcating the claim. It's our position  
7 that bifurcating this case is going to cause  
8 essentially two trials to happen, duplicative evidence,  
9 all those different things. However, if the Court  
10 wants to bifurcate this trial and it chooses to do so,  
11 I've also outlined exactly how that has to go.

12 The fraud in the inducement claims have to go  
13 first. Because that would -- if the contract is deemed  
14 void, rescinded, whatever it turns out to be because of  
15 the fraud in the inducement, all the rest of the claims  
16 go away and the Court doesn't have to try the rest of  
17 the case.

18 I walked through --

19 THE COURT: So what you're saying is this.  
20 You're saying, Look, Judge, if there's fraud in the  
21 inducement, there can't be a breach of the construction  
22 loan agreement.

23 MR. ALDRICH: Correct.

24 THE COURT: I understand.

25 MR. ALDRICH: And so if there's going to be a

1 bifurcation, those have to go first.

2           Then if the Court finds that there's not  
3 fraud, then we can fight about how the agreement went  
4 down and who's in breach and all those different  
5 things. And I walked through these cases.

6           THE COURT: And I want to make sure I'm clear  
7 on this. Are there any remaining equitable claims?

8           MR. ALDRICH: That's a good question.

9           Because -- I don't think I have a second  
10 amended complaint with me.

11           We certainly have -- could amend once we have  
12 all the evidence, too, to assert some equitable claims,  
13 rescission, or something like that. As I stand here  
14 today, your Honor, I can't remember if we have an  
15 asserted rescission as a possible remedy in the second  
16 amended complaint. I don't remember.

17           But certainly the fraud claims are either  
18 common law based. I think they're probably ripe for a  
19 jury. I will say this, there is --

20           THE COURT: And you know why I asked that  
21 question, because if it's at law, the jury decides, or  
22 the ultimate fact finder.

23           MR. ALDRICH: Correct.

24           THE COURT: If it's an equitable claim, the  
25 trial court decides.

1 MR. ALDRICH: The Court does. I understand  
2 that.

3 We do have, I guess, an issue as to whether a  
4 jury is appropriate here or not. The construction loan  
5 agreement says that there's a waiver of that jury  
6 trial. The defendants actually filed a request or  
7 demand for jury trial. And when they did, so did we.

8 And so, I mean, our position, I guess, would  
9 be with those claims that are appropriate before a  
10 jury, they should be put there because they've been  
11 waived, or that that waiver of a jury trial regardless  
12 has been waived because the defendants filed a demand.  
13 We filed it too.

14 THE COURT: That's an interesting issue.

15 MR. ALDRICH: It is interesting.

16 THE COURT: Before I comment on that, before I  
17 make a decision, unless there was an agreement, I'd ask  
18 for full briefing on that because that's a fascinating  
19 issue.

20 MR. ALDRICH: And your Honor probably doesn't  
21 remember because this was a long time ago, but I argued  
22 this issue in front of the Court many years ago on  
23 another trial I had in front of the Court. And that's  
24 what the Court made us do in this instance as well.

25 THE COURT: I never rush to judgment,

1 Mr. Aldrich.

2 MR. ALDRICH: Understood. I -- it came up, so  
3 I just raised that issue.

4 THE COURT: Yeah.

5 MR. ALDRICH: But --

6 THE COURT: Well, at least I'm consistent;  
7 right?

8 MR. ALDRICH: That is correct.

9 THE COURT: Yes.

10 MR. ALDRICH: But the bottom line, back to the  
11 motion to bifurcate, I cited the Awada case. I walked  
12 through that. I won't read the Court the quotes, but  
13 it makes it pretty clear fraud in the inducement comes  
14 first. The only case that was cited by defendants in  
15 their brief was a federal court case. And they -- they  
16 did bifurcate in that, but they bifurcated fraud claims  
17 related to a separate sales agreement versus the other  
18 issue involved.

19 So in this instance, as I said before, it's  
20 really one continuous fraud, and it should be tried --  
21 really it should be tried together. But if the Court  
22 is going to bifurcate, the fraud claims should go  
23 first.

24 Does the Court have more questions for me?

25 THE COURT: No, sir.

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1 MR. ALDRICH: All right. Thank you for your  
2 time.

3 -o0o-  
4 (Recess)  
5 -o0o-

6 THE COURT: All right. Mr. Greer.

7 MR. GREER: Yes, your Honor.

8 Mr. Aldrich stated that this is an ongoing  
9 continuous fraud because -- in part because Las Vegas  
10 Development Fund continued to accept money for  
11 marketing, even after May 2015.

12 But what is disingenuous about that is prior  
13 to May of 2016, monies coming from Front Sight were  
14 given to EB5 Impact Capital Advisors in order to do  
15 specific things like set up a resources -- a regional  
16 resources center, set up a team of brokers and agents,  
17 establish the infrastructure for EB5 fundraising  
18 operations.

19 After May 2012 the rules changed because  
20 there's a new agreement, and the agreement at that  
21 point in time is there's no money given, just checks  
22 cut over to Las Vegas Development Fund with them having  
23 the discretion to then go out and spend it on marketing  
24 and then, you know, report to Front Sight in some way.

25 No, at that point in time Front Sight said, In  
light of the fact that we're not going to make all the



1 money that we thought we're going to make sure, I guess  
2 haven't achieved the goals that we were aspiring to,  
3 from now on out, we're not going to pay up unless you  
4 give us money.

5           And so at that point in time, after the  
6 May 2016, every bit of money that Mr. Piazza and  
7 Mr. Aldrich are saying were for marketing, that was for  
8 performance. Checks weren't given to -- if there were  
9 some given to the Capital Advisors and Impact Advisors;  
10 some were given to LVD Fund. But they were all after  
11 monies were released from escrow to Front Sight, then  
12 the performance payment was given.

13           So that's -- that's, again, a reason to  
14 bifurcate because there is no issue of how that money  
15 was to be spent. Front Sight had no control over how  
16 that money was to be spent. Las Vegas Development Fund  
17 had no obligation to tell Front Sight how it was  
18 spending that money. All that Las Vegas Development  
19 Fund had to do was go out, get capital, give it to  
20 Front Sight, and get paid for doing so.

21           So it also shows how it's disingenuous to say  
22 that Front Sight -- that LVD Fund stopped marketing at  
23 that point in time because LVD Fund kept getting  
24 capital, knew EB5 investors were coming in. They were  
25 putting their money in the escrow, and that money was

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1 being given to Front Sight. Front Sight, then, in  
2 return paid the progress payments, the performance  
3 payments.

4           So, again, very, very separate and distinct  
5 contract, separate and distinct relationship.

6           This argument coming up, again, about some  
7 fraud in the inducements, alleviating Front Sight from  
8 the obligation to pay the loan. I still have yet to  
9 figure out how that fits in. I don't think fraud in  
10 the inducement is going to be any legal basis to not  
11 pay the interest and be -- and comply with the  
12 construction loan because it's the EB5 investor's  
13 money. They are the persons who are putting up the  
14 capital. They're the ones that need to be protected  
15 here. They're innocent third parties, and we know  
16 that. We've supplied the Court with the law. This  
17 unclean hands doctrine does not apply to this situation  
18 where to do so would affect innocent third parties.

19           Lastly, on the issue of the jury, we put up --  
20 we did a jury demand just to protect the rights, the  
21 ability to do so later. We still have the ability to  
22 waive that, I believe, and withdraw it.

23           THE COURT: What's the impact for the  
24 construction loan agreement and the provisions pursuant  
25 to the contract where there's a waiver of the right to

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1 a jury trial? I mean -- and understand, that's not  
2 being briefed today. I'm not going to decide that  
3 issue.

4           But here's my thought. And one of the things  
5 as a trial judge -- and, I mean, I don't know where  
6 we're going to, ultimately, end up with this case,  
7 whether it's going to be a bench trial, jury trial, or  
8 whatever. I mean, I don't know because it hasn't been  
9 fully vetted and briefed, and I will not decide that  
10 issue until I'm sure; right? And that's how I do it.

11           But one of the things I always contemplate and  
12 I spent a lot of time on -- for example, tomorrow we're  
13 having a jury come in; right? We'll have about 100  
14 panel members. And I actually conduct a very extensive  
15 voir dire of the panel. And there's -- there's two  
16 focuses for me. And one is I just want to make sure  
17 the jury understands why they're there; right? And I  
18 go through this whole litany of discussions regarding  
19 the history of this nation.

20           But I have another series of questions  
21 regarding the process itself. And the -- and I want to  
22 make sure the jury will follow the instructions of the  
23 Court, even if they disagree. Right? Because it's  
24 very important we don't have jury nullification.

25           But there's another focus I give, and it's on

1 the "you can't rush to judgment," and it's so,  
2 important. It really and truly is. Even as a trial  
3 judge, I have to sit back and make sure I hear all the  
4 facts and those types of things. Because when I  
5 explain to the jury the protocol of how the trial will  
6 proceed, and, you know, you can't even make your  
7 decision until at the very end when you have the  
8 instructions, and you've listened to all the evidence,  
9 and that's when you deliberate.

10           And so in this case I can't rush to any  
11 conclusion; right? And here's my point. For example,  
12 we still have a pending fraud in the inducement claim;  
13 right? Still there. And so with that in mind, how can  
14 I decide the breach of the construction loan  
15 separately? And before but not at the same time that  
16 the fraud, the fraud in the inducement claims, are  
17 being decided?

18           MR. GREER: We agree, your Honor.

19           THE COURT: You see where I'm going on that?

20           MR. GREER: Absolutely. Absolutely. Because  
21 in both case --

22           THE COURT: Yes.

23           MR. GREER: -- after you bifurcate, there  
24 is -- if there is a surviving fraud in the inducement  
25 claim, it has to be heard first on both cases.

1 THE COURT: Right.

2 MR. GREER: The difference here is one -- two  
3 things. One with regard to the jury question, your  
4 Honor, which applies to this, when we -- when we demand  
5 a jury, remember there are cases -- there are claims in  
6 the complaint that have nothing to do with the  
7 construction loan agreement.

8 The Impact Advisors allegations, we have  
9 people that aren't parties to the construction loan  
10 agreement, so that jury demand is two things that can  
11 be tried as to a jury. Even though we've requested a  
12 jury, we can't try the equitable claims that are in  
13 there.

14 THE COURT: We can all agree on that.  
15 Absolutely.

16 MR. GREER: Right. And you know what, your  
17 Honor, we can't do the contract either. That's -- if  
18 there are claims in the complaint which should not be  
19 heard by a jury, then the jury demand doesn't all of a  
20 sudden make them able to be heard by a jury demand --  
21 by a jury. So it's -- I would say that the contract  
22 claims and the equitable claims will be handled  
23 similarly. And we have to include it as a demand  
24 because there are all kinds of causes of action in  
25 there involving claims and parties that aren't related

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1 to the construction loan agreement.

2           So with regard to the fraud in the inducement,  
3 I think on the bifurcation case, you would hear the  
4 fraud in the inducement claims first.

5           But I think why this makes this such a quick  
6 trial and allows us to move quickly on the loan  
7 agreement is once the evidence comes forward here, what  
8 are the allegations that you say were made that you  
9 relied upon in fraud and fraudulently induced you to  
10 enter into a construction loan agreement, well, because  
11 of this email in May of 2016 where everybody agreed,  
12 not going to go bring in 50 million, not going to bring  
13 in 75 million, not going to bring in 35 million. We  
14 have millions in the bank. That's it. Let's decide  
15 what we're going to do.

16           There is just no fraud in the inducement  
17 evidence that goes into the bifurcated trial for the  
18 construction loan agreement.

19           And they can't in good faith say that, I  
20 believe that they were going to make this 75 million  
21 and that's why I entered into the construction loan  
22 agreement, because right there in May of 2012 they all  
23 agreed it wasn't going to happen.

24           So any of the fraud in the inducement claims  
25 would end at that point. And I think that issue should

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1 be tried and the bifurcated case involving the  
2 construction loan agreement, it will just be a very  
3 quick, short part of the trial. And it will be heard  
4 by your Honor because that relates to the construction  
5 loan agreement, which all the parties have waived jury  
6 to.

7           So I think that even though fraud in the  
8 inducement will be heard first, it will be dealt with  
9 in short shrift in the loan agreement case; whereas, it  
10 will be the primary focus and a very lengthy process in  
11 the engagement letter case.

12           THE COURT: Okay. What do you think about  
13 that, Mr. Aldrich? What do you think? Because --

14           MR. ALDRICH: Well --

15           THE COURT: -- it does appear to me -- and I  
16 understand I haven't been fully briefed on it.  
17 Typically we do briefing on this issue. But the fraud  
18 has to have some sort of an impact; right?

19           MR. ALDRICH: It has to what? I'm sorry.

20           THE COURT: It has to be an impact on how the  
21 case proceeds procedurally.

22           MR. ALDRICH: Yes.

23           THE COURT: As long as it's a viable claim.

24           MR. ALDRICH: Yes.

25           THE COURT: We can all agree with that; right?

1 MR. ALDRICH: Yes.

2 THE COURT: So I think what Mr. Greer was  
3 saying -- and, of course, I know you don't agree with  
4 this aspect of it because I was going to say. I guess,  
5 he's kind of agreeing that maybe the fraud would have  
6 to be tried at the same time of the construction loan  
7 agreement case. You don't agree with that. I think  
8 you probably disagree with the time it would take to  
9 try that component, I understand that, but what's your  
10 take on that?

11 MR. ALDRICH: Well, my take on it is as I said  
12 before. This is one scheme and it has gone on  
13 through -- we can say it's through two agreements. But  
14 remember what Mr. Dziubla has said about -- during the  
15 testimony. Now I am going off of memory, and I can  
16 pull it out and look at it if I -- if it turns out that  
17 defendants disagree with what I say. But I've already  
18 said one thing, which was he said that LVDF, Las Vegas  
19 Development Fund, took over the marketing for EB5 IA  
20 once the agreement was signed.

21 Well, that's -- that's not consistent with the  
22 money that he took and the way things were done. He  
23 shut -- he also said that the engagement letter was  
24 extended by gentleman's agreement until he decided to  
25 do away with it. Well, those are -- how does that



1 work?

2 I mean, there are -- all of these things are  
3 so intertwined, I think it's difficult to separate  
4 them. But nonetheless, you absolutely have to do the  
5 fraud issues first regardless, and I've already kind of  
6 gone through today what those issues are, even related  
7 to the CLA, to the construction loan agreement, if the  
8 Court decides to bifurcate those issues. But this is  
9 a -- this is an ongoing fraud over a long period of  
10 years.

11 And I will remind the Court in making this  
12 decision right now, please remember, I have a motion --  
13 we're -- still haven't talked about the subpoenas. I'm  
14 asking for bank records. Why? Because my client has  
15 given over \$500,000. When the Court ordered an  
16 accounting from EB5 IA, we got some documents. Okay.

17 I've got an accountant waiting for more  
18 documents, and he can give us a report. And he may  
19 just have to give me a report on what he needs. But  
20 they're here saying, Your Honor, bifurcate right now.  
21 Right? But we don't have the evidence that we need.  
22 We're going to talk about the bank records in a few  
23 minutes. But this is all very significant stuff  
24 because my client paid \$500,000 over the course of two  
25 agreements, by the way, to have this project go

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1 forward.

2           And so that is significant because all of  
3 those things are going to matter as we go forward to  
4 try this case.

5           THE COURT: And here's my next question. If  
6 the fraud in the inducement is tried at the same time  
7 the breach to the construction loan agreement is tried,  
8 what's left?

9           MR. ALDRICH: If -- I think it tries the whole  
10 thing. If we do fraud in the inducement -- because as  
11 I'm standing here telling the Court, it starts in 2012,  
12 2013, and it goes really to current. And that is all  
13 the issues are going to be resolved, in that one trial.  
14 That will include the fraud in the inducement, it will  
15 include the contract claims, the counterclaims, all of  
16 it, which is why our initial position is the Court  
17 shouldn't bifurcate. We should just try the case.

18           THE COURT: I get that. But my question is  
19 this: If I throw in the fraud claim with the  
20 construction loan agreement, I know Mr. Greer feels  
21 that will be a very short part of the presentation of  
22 evidence. I'm quite -- and this is a one -- I just  
23 know this. It would be -- your position would be the  
24 exact opposite. It would be, Judge, we're going to --  
25 it's going to take days to try the fraud in the

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1 inducement.

2 MR. ALDRICH: Of course.

3 THE COURT: Of course, right. I just know.

4 MR. ALDRICH: Of course.

5 THE COURT: And so -- and I was just looking  
6 at it from this perspective: If you have a fraud, you  
7 have a breach of contract, what's really left? I mean,  
8 you might have some affirmative defenses. You might  
9 have estoppel, waiver. I mean, I don't know. I'm just  
10 trying to think off the top of my head. But ultimately  
11 rescission.

12 But what's left? Because those would all -- I  
13 think, probably whatever affirmative defenses and the  
14 like would be available would stem directly from the  
15 facts as it relates to the allegations of fraud and the  
16 allegations of breach of the construction loan  
17 agreement.

18 Am I missing something?

19 MR. ALDRICH: No. In fact, if there were  
20 anything left, especially reputable things that were  
21 left or whatever, your Honor, whether it was a jury or  
22 bench trial would have sat through it, and would  
23 probably be in a position to either just make a  
24 decision on those issues or at least request briefing  
25 based on what was already done and then make a decision

1 on those issues. So that would seem to me to be more  
2 efficient just to do it all together.

3 THE COURT: All right. The only reason why I  
4 bring this up, I remember it was -- at one time I had a  
5 case, and it was specifically dealing with equitable  
6 indemnity issues; right? And so at first blush when  
7 you're dealing with equitable indemnity, there's no  
8 contract, no contractual indemnity. And I had a  
9 question for the lawyers. I said, Okay. In an  
10 equitable indemnity scenario, who do you try the case  
11 in front of? Right? And we had a real long discussion  
12 on that.

13 MR. ALDRICH: Um-hum.

14 THE COURT: And it actually ended up with some  
15 briefing. I think I know the ultimate answer to that  
16 question, but it's -- it's a fascinating issue. So  
17 that's why I brought it up. And we're clear, no one is  
18 disagreeing about equitable claims are tried to the  
19 Court, but I'm just looking at it from this  
20 perspective. Because if I bifurcate and we have to  
21 have the fraud heard at the same time or breach of the  
22 construction loan agreement, what is left to try?  
23 That's my point.

24 MR. GREER: I have the answer.

25 THE COURT: All right.

1           MR. GREER: So, your Honor, this shows exactly  
2 why the Court really must bifurcate. Because if you  
3 bifurcate, then the question in the case first will be  
4 was there fraud in the inducement. And your Honor will  
5 then look at that evidence and determine whether the  
6 evidence applies to the construction loan agreement or  
7 not.

8           And this is the important part. Because if  
9 the Court decides that neither that inducement goes to  
10 the contract, your Honor hears that, your Honor hears  
11 that theory, your Honor makes that decision, your Honor  
12 makes the decision first as to whether it was evidence  
13 of fraud in the inducement. Anything your Honor says  
14 wasn't related to the construction loan agreement then  
15 goes to the jury.

16           If your Honor doesn't bifurcate and hear this  
17 first, the jury winds up getting -- making decisions  
18 that the judge -- that your Honor later has to make  
19 because it relates to the construction loan agreement,  
20 we could have disparate rulings. And it's clear that  
21 if the judge is going to rule on something, the judge  
22 has to rule on it first. And so by bifurcating --

23           THE COURT: But what would be left?

24           MR. GREER: What would be left. Here's --

25           THE COURT: Here's my question.

1 MR. GREER: Just --

2 THE COURT: And -- and -- and these are just  
3 thoughts. This is not a decision I've made. These are  
4 just issues that I've thought about.

5 For example, would the fraud in the inducement  
6 issue be heard by me as a trial judge based upon the  
7 waiver language contained in the construction loan  
8 agreement?

9 MR. GREER: Yes.

10 THE COURT: These are just thoughts.

11 MR. GREER: Yes, that is --

12 THE COURT: And I don't want to cut you off,  
13 but put a big question mark after I say that. Right?  
14 I'm not saying --

15 MR. GREER: I think the language is pretty  
16 clear. It says anything relating to a dispute over  
17 this agreement, which would inherently include fraud in  
18 the inducement, your Honor decides.

19 THE COURT: Okay.

20 MR. GREER: It's big capital letters all the  
21 way through. And so --

22 THE COURT: My point is I'm just making a  
23 statement. That's all I'm saying. Put a question  
24 mark.

25 MR. GREER: Okay.

1 THE COURT: I don't know the answer to that.  
2 That's a question that's so obvious to me.

3 MR. GREER: Then you said what's left. Well,  
4 there's still -- with regard to the -- you have to go  
5 then over to the Impact Capital advisor group, and  
6 there is allegations of how they spent their money.  
7 How the money was spent is a big contention that Front  
8 Sight is trying to tie into this whole thing, but there  
9 is actually two different types of money here. There's  
10 money given to Capital Advisors that Front Sight is  
11 saying wasn't spent efficiently in marketing, and they  
12 feel they had more say and control over that money  
13 than -- than they got.

14 And then after May 2016, you have the -- the  
15 performance bonuses, which Front Sight had no control  
16 over, no ability, no right to even know where it went.  
17 So when Mr. Aldrich said we spent over \$500,000 here,  
18 well, that's right. It's maybe \$360,000 to EB5 Impact  
19 Advisors, 140 over here to Front Sight. I don't  
20 know -- to LVD Fund. I don't know how it balances out,  
21 but there is two different types of payments, two  
22 different amounts. And those are two different trials.

23 So if the judge -- your Honor bifurcates the  
24 case, looks at the fraud in the inducement argument,  
25 determines, you know what, this fraud in the inducement

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1 evidence does not apply to the construction loan  
2 agreement, therefore, jury, it's going to go to you and  
3 you can deal with it on the capital advisor case.  
4 Conversely, if your Honor says that it does apply, then  
5 your Honor makes a decision on that fraud in the  
6 inducement evidence at that time so that the jury  
7 doesn't make a decision, a duplicative decision later  
8 when we go back to them over to the other case  
9 involving Capital advisors and which there are still  
10 issues that will remain as to how the money was spent,  
11 did Front Sight have the right to control that money,  
12 was -- you know, did -- Impact Capital advisors somehow  
13 breach any duty they had to Front Sight, which is all  
14 jury. All jury.

15           So really the only logical way to make it work  
16 and avoid duplicative decisions and to efficiently get  
17 the process done is to bifurcate. And I think it will  
18 have to be bifurcated eventually. I'm confident  
19 enough, almost 100 percent. The question is do we do  
20 it now versus later. We're pushing for us to do it now  
21 because doing it now has the added benefit of allowing  
22 the construction lender funded by EB5 investors to move  
23 quickly through this process to get final determination  
24 before the Court.

25           Because it's -- your Honor -- I think your

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1 Honor is going to have to bifurcate it at some time.

2 So anyway, that's what I have to say.

3 THE COURT: And here's just one other thought.  
4 I was listening, and I think it only goes one way. If  
5 someone disagrees, that's okay, and you can tell me  
6 why.

7 But if I make a determination -- for example,  
8 I haven't looked at the language, and this isn't that  
9 specific motion as it relates to the waiver of the jury  
10 trial and its impact pursuant to the language contained  
11 in the construction loan agreement. But if I make a  
12 determination that there's a nexus between the  
13 construction loan agreement and the allegations of  
14 fraud in the inducement, it would appear to me as a  
15 matter of law that has to be decided by the terms and  
16 conditions as set forth in the construction loan  
17 agreement, versus if I make a determination that  
18 they're unrelated, then maybe they're tried separately.  
19 I don't know.

20 MR. GREER: That's exactly what would happen.

21 THE COURT: But those are just my thoughts  
22 from a legal analysis.

23 MR. GREER: I think that's the logical way  
24 that it works out.

25 THE COURT: Okay. Just -- Mr. Aldrich. You

1 can -- we're just having a dialogue here. Then I'll  
2 make some decisions.

3 MR. ALDRICH: Okay. So, I mean, I've kind of  
4 said my piece. I will clarify. Mr. Greer was  
5 explaining that EB5 Impact Capital Advisors is actually  
6 the regional center, and I don't believe that it was  
7 the one that was paying money out, due to the  
8 marketing. I believe that was EB5 Impact Advisors.

9 And so that may help with, you know, some of  
10 the confusion, kind of -- sorry, kind of goes to my  
11 argument that it's all kind of one in the same. But, I  
12 mean, I've kind of -- I'm kicking a horse that's down  
13 already at this point. I mean, our position is that  
14 the fraud covers the whole time and it should not be  
15 bifurcated. But if the Court is going to bifurcate  
16 it --

17 THE COURT: No, no.

18 MR. ALDRICH: -- we got to do the --

19 THE COURT: I'm not sure.

20 MR. ALDRICH: -- I don't have anything else to  
21 add.

22 THE COURT: Okay. But I think -- would you  
23 agree with this or disagree that if -- and my question  
24 is this: That if the fraud is somehow linked to the  
25 construction loan agreement, then the language in the

1 construction loan agreement would dictate how we  
2 proceed procedurally as it relates to a jury trial or  
3 non-jury trial?

4 MR. ALDRICH: That's a good question.

5 THE COURT: That's what my --

6 MR. ALDRICH: Probably needs some briefing;  
7 right? Because my position is that we were defrauded  
8 into entering in that agreement in the first place.

9 THE COURT: Right.

10 MR. ALDRICH: So to me fraud claims -- there  
11 are common law fraud claims. They're legal questions  
12 and should be in front of a jury. I mean, I recognize  
13 that there's a construction loan agreement that has  
14 this waiver of a jury trial in it, and now I've already  
15 expressed my position that that's waived anyway. And  
16 so, you know, I guess, I would disagree to some degree,  
17 because I think that they are common law claims that  
18 should be heard in front of a jury. And fraud.

19 MR. GREER: If I can, I think the law says  
20 there is a lot of law on this in the arbitration clause  
21 that I think applies equally to the jury waiver clause.

22 THE COURT: There is no doubt --

23 MR. GREER: Because you have to show fraud in  
24 the inducement of the particular clause in order to --  
25 to get around a clause that's in the agreement.

1           Fraud in the inducement of the agreement  
2 itself does not get you around an arbitration clause.  
3 It won't get you around a waiver of jury trial clause.

4           THE COURT: But, I mean, like the seminal case  
5 involving the arbitration, enforceability of  
6 arbitration clauses would be -- I think it's the AT&T v  
7 Concepcion case that was decided by our United States  
8 Supreme Courts, probably about six, seven, eight, nine  
9 years ago. And that specifically dealt with the  
10 enforceability of the arbitration clauses.

11           What was unique about that, I mean, waiver of  
12 the right to a jury trial under the arbitration in a  
13 consumer contract setting, what's unique about that,  
14 that was actually a class action case. That is my  
15 recollection. I haven't read it in a long time.

16           But -- and -- and I think the United States  
17 Supreme Courts said the typical defenses of procedural  
18 and substantive unconscionability didn't apply, because  
19 I think that's a California case. And typically that  
20 was a defense, and they actually overruled the  
21 California Supreme Court in that case.

22           And -- but interesting. Because here's my  
23 thoughts. And this is one of those -- I mean, normally  
24 I don't -- it's rare that we bifurcate cases. We have  
25 Nevada case law that stands for the proposition that if

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1 the damages and liability are intertwined, it would be  
2 abuse of discretion for the trial court to grant  
3 bifurcation under those conditions, you know.

4           And, however, regardless of the -- whether you  
5 get a jury trial on one issue or not, or whether  
6 there's been a waiver or not, I do think that at the  
7 end of the day, the fraud can't be bifurcated from the  
8 breach of the construction loan agreement.

9           Now, I've had other thoughts, and I'll just  
10 throw this out. And this is one of the reasons why,  
11 when it comes to cases that might be somewhat more  
12 complex procedurally, and we've done this many times in  
13 this department. That's why we have trial protocols.  
14 And I think everybody understands what that means.

15           And so this is what I'm going to do for now:  
16 I'm going to deny the motion to bifurcate without  
17 prejudice.

18           And this is why: I feel that before I make a  
19 final decision, we have to vet, unless we have some  
20 sort of an agreement, as to specifically whether that  
21 fraud claim comes up under the terms and conditions as  
22 set forth in the consumer loan agreement. Although, if  
23 you want to do briefing on that, then we can.

24           And just as important, if I rule that they do,  
25 then I probably would bifurcate those out and have

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1 those tried together, if you understand what I'm  
2 saying.

3 MR. GREER: I don't think we can bifurcate  
4 just the fraud claims, though.

5 THE COURT: No, no, no. I'm saying I will try  
6 the construction loan agreement along with the -- with  
7 the fraud claims in the inducement together.

8 MR. GREER: And then to the extent they apply,  
9 they're determined. To the extent they don't apply and  
10 they relate to the other acts, then they're tried with  
11 the jury in the other action.

12 THE COURT: Potentially, yes.

13 MR. GREER: Okay.

14 THE COURT: You see what I'm saying,  
15 Mr. Aldrich?

16 I think -- I'm not going to sit here and say,  
17 Look, sir -- and that's why I denied the motion -- that  
18 I'm not going to make a determination that the fraud  
19 claims as a matter of law without having briefing on  
20 the language as contained in the construction loan  
21 agreement stands for a waiver of your client's right to  
22 a jury trial as it relates to the fraud claims, without  
23 having full briefing on that issue.

24 I do think they're related. Right?

25 Just as important, too, looking at this, and

1 this is where I think we need to dig a little deeper,  
2 would fraud be -- if there's a determination of fraud,  
3 what impact does that have on the construction loan  
4 agreement? Right?

5           It's your position that it would be -- that it  
6 would -- that the construction loan agreement would be  
7 void and/or voidable, I think, right?

8           MR. ALDRICH: Yes.

9           THE COURT: I understand that.

10           And I know Mr. Greer doesn't agree with that,  
11 right?

12           But those are issues -- those are somewhat  
13 complex issues that we don't see every day, right? I  
14 mean, everyone here might see them, but I don't.

15           But -- and so -- pardon?

16           MR. GREER: So if -- if --

17           THE COURT: Go ahead.

18           MR. GREER: So, your Honor, if I go up to a  
19 friend and, you know, and he wants to borrow some  
20 money, and I -- I pull out my pocket, I have 20 bucks.  
21 I can only lend you 20. Well, I need 40. I can only  
22 lend you 20. Right?

23           Then I go back around the corner and reach in  
24 my other pocket, I got another 20. My friend sees it  
25 and he says, You lied to me. You had 40. You said you

1 only had 20. I'm not going to pay you your 20 back,  
2 because you only gave me 20 when you had 40.

3 I'm not seeing how that has any impact on his  
4 ability, his obligation to pay the money back.

5 THE COURT: Well, here's -- well, here's the  
6 thing. And I'm not necessarily saying that, and I  
7 don't think -- I don't think plaintiff is taking a  
8 position that they don't have to repay the funds, the  
9 \$6 million.

10 Is that a position you're taking?

11 MR. ALDRICH: Your Honor, I think that that  
12 all kind of remains to be seen at the end, whether  
13 they -- I certainly see the scenario where they didn't  
14 pay back the \$6.3 million. There is also an argument  
15 to be had about damages. And all this is kind of  
16 addressed in the other motion that's out there.

17 THE COURT: I understand.

18 MR. ALDRICH: But --

19 THE COURT: I do. But I think we're -- I  
20 think we can't simplify it in this regard. Say, if we  
21 change our scenario slightly, where your friend came to  
22 you and said, Look, you know, I can raise \$100,000 for  
23 you. And I got all this money set aside. And we can  
24 go ahead and start some improvements, and those types  
25 of things. And, yeah, I'm sure you can get the

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1 \$100,000, and lo and behold, it comes to light that  
2 maybe you can't get that 100,000. And whether you knew  
3 or should have known, that is a different issue. And  
4 you can only get 20.

5 MR. GREER: Yes.

6 THE COURT: And what impact does that have on  
7 the friend?

8 MR. GREER: Is it different, though, if he  
9 says, you know what, I can only get 20. That's all we  
10 got. You want me to give the 20 back to the people I  
11 raised it from? Or let me give it to you to for the  
12 loan -- you make the call. Clearly, I couldn't come up  
13 with what I said earlier I was going to come up with.

14 So -- and then if you take the 20, I think you  
15 have to pay it back with interest and terms, and I  
16 don't think that you can benefit from knowing that  
17 you're -- that the guy couldn't raise the whole  
18 hundred, and then take his 20 and take advantage of it.

19 THE COURT: And -- and this is important to  
20 point out. And understand, I try to think and make  
21 statements that are qualified. And there's a reason  
22 for that.

23 Understand, I think when we had this  
24 discussion, I said it was based upon the current  
25 procedural posture of the case, right? And so I

1 haven't thrown out the fraud claims as a matter of law,  
2 have I?

3 MR. GREER: No, sir.

4 THE COURT: You see where I'm going?

5 MR. GREER: Okay.

6 THE COURT: I can't -- it goes back to my  
7 statement, remember, I made regarding I can't rush to  
8 judgment.

9 MR. GREER: Yes.

10 THE COURT: Right?

11 MR. ALDRICH: Correct.

12 THE COURT: Yeah. And that's why I said all  
13 that, you know. I understand everybody's respective  
14 position. I do get it.

15 But until certain claims are peeled off or  
16 whatever, or are still part of the case, I look at it  
17 this way: Everything is still there.

18 Right, Mr. Aldrich? It's still there.

19 MR. ALDRICH: Yes.

20 THE COURT: And so I think -- and I think  
21 that's when judges get in trouble from an appellate  
22 perspective, when they rush to judgment. Because you  
23 can, ultimately, maybe be right, but -- after it's all  
24 said and done, but if you don't go through the process,  
25 we're going to say you're wrong.

1 Right, Mr. Aldrich?

2 MR. ALDRICH: That's correct.

3 THE COURT: Yes.

4 MR. ALDRICH: Okay.

5 THE COURT: So where do we go from here?

6 And that's without prejudice. I just want to  
7 make sure you understand that.

8 MR. GREER: Sure.

9 THE COURT: Because I do think -- and I don't  
10 mind saying this. On some level we're going to have to  
11 revisit, and maybe this might even go to an issue more  
12 of trial protocol. But we're going to have to revisit  
13 how these cases ultimately are going to be tried.

14 All right. And I don't know the answer to  
15 that yet. And I rely on counsel to help me out on  
16 that.

17 MR. ALDRICH: Understood.

18 THE COURT: Okay. So.

19 MR. ALDRICH: The -- I think the -- you know,  
20 the supplemental Rule 16, or 16.1, whichever qualifies  
21 as conference related to the counterdefendants and then  
22 the discussion of the NRCP 65(a)(2) notice.

23 THE COURT: Okay. Let's go to the Rule 16  
24 issue.

25 MR. ALDRICH: Okay. So in this respect, I

1 mean, I think the issue there is the deadlines that are  
2 in the current joint case conference report, I should  
3 have looked at it before I came.

4 I don't know if, Kathryn, if you know what  
5 they are.

6 MS. HOLBERT: Yes.

7 MR. ALDRICH: I want to say trial is like a  
8 year from now, and experts are due in, like, June.

9 THE COURT: Right.

10 MR. ALDRICH: I'm -- I mean, for purposes of  
11 the conference today, obviously the defendants want to  
12 start some discovery on the counterclaims because they  
13 want to have that conference, and then if the Court is  
14 inclined, we need to talk about when we're going to  
15 really try the case. If the Court wants it to be  
16 different than what's in there in -- in the judgment of  
17 conviction right now.

18 MS. HOLBERT: Right. And typically for the  
19 purposes of the supplemental case conference report is  
20 do you agree with the current dates or not.

21 THE COURT: Right.

22 And, Ms. Holbert, where should we go on that?  
23 What's your -- do we hold -- because this is kind of --  
24 this is kind of interrelated to the notice I gave  
25 regarding -- what was that? Let me see here.

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1           Yeah, the status check regarding 65(a)(2)  
2 notice; right?

3           MS. HOLBERT: Correct. Yes, I think we're --  
4 we're doing those together.

5           MR. ALDRICH: They seem to go together.

6           THE COURT: They do.

7           MS. HOLBERT: Yeah.

8           THE COURT: That's my point.

9           MS. HOLBERT: Right. Really the main thing  
10 that we wanted is that the supplemental case  
11 conference, that provision of the rule is then  
12 satisfied. That's what we wanted today so that we can  
13 begin discovery on those. I think the broader question  
14 of can we move the trial up, do the dates stand as is  
15 goes more into the notice issue.

16           THE COURT: Right. So any objection to this  
17 meeting the requirements of 16.1 as it relates to the  
18 additional claims?

19           MR. ALDRICH: The counter-defendants.

20           THE COURT: Counter-defendants, yes.

21           MR. ALDRICH: No.

22           THE COURT: Okay. So that's been handled.

23           MS. HOLBERT: Thank you.

24           THE COURT: All right. And, I guess, we -- we  
25 will have to, I guess, lodge or just file the

1 supplemental report on that.

2 MR. ALDRICH: The supplemental --

3 THE COURT: 16.1.

4 MR. ALDRICH: -- joint case conference report.

5 THE COURT: Yes.

6 MR. ALDRICH: Correct.

7 THE COURT: Yeah. All right.

8 Next up would be Rule 65; right?

9 MR. ALDRICH: Correct. So --

10 MS. HOLBERT: Correct.

11 MR. ALDRICH: -- the Rule 65 notice plus, you  
12 know, if we're going to change any dates in the  
13 supplemental joint case conference report.

14 MS. HOLBERT: Right.

15 MR. ALDRICH: Those seem to go together. And  
16 now seems to be the time to do it.

17 THE COURT: Right. But I don't know what you  
18 want to do, I really don't, as far as dates are  
19 concerned. Do we have some recommended dates?

20 MR. ALDRICH: I mean, we have dates in the  
21 joint case conference report already.

22 THE COURT: All right.

23 MR. ALDRICH: Those are fine for me. I know  
24 the Court has expressed a desire to go faster.

25 THE COURT: And there's -- there's a reason

1 why. And number one -- let me look here.

2 This is a business court case.

3 MR. ALDRICH: It is.

4 THE COURT: Everybody understands that.

5 I don't mind saying this. I spent more time  
6 on this business court case than any business court  
7 case I have, including some pretty complex shareholder  
8 derivative actions involving strip resorts and -- and  
9 other matters involving actions of political  
10 subdivisions within the state of Nevada. I mean, I  
11 have. And -- and notwithstanding they're all very  
12 important. I don't mind saying that.

13 And so my point is this. I remember taking a  
14 look at the rule, and this is an often overlooked  
15 provision under Rule 65, I've done it in one other  
16 case, and it just seems to me that from an efficiency  
17 perspective, and that's more so than anything else, if  
18 you have a potential contract in place that impacts  
19 certain claims of whether there's a right to a jury  
20 trial or not, that I've heard a lot of testimony. We  
21 can all agree.

22 Just as important, too, some of the testimony  
23 it reminded me of -- it was -- some of it was  
24 deposition.

25 MS. HOLBERT: Yes.

1 THE COURT: Great. Right. It was.

2 So I just thought about it, and I said -- I  
3 looked at the provision. And I said to myself, I'm  
4 always told by our Supreme Court, and more specifically  
5 I think this whole business court was the child of  
6 Justice Hardesty, I think he started this. This is one  
7 of his pet projects. And there's nothing wrong with  
8 it. He wanted Nevada to become like the Delaware of  
9 the west --

10 MS. HOLBERT: Right.

11 THE COURT: -- and have the specific business  
12 court and the like. And so when I looked at  
13 Rule 65(a)(2), and reflected a little bit, and it  
14 provides as follows:

15 "Before or after the commencement of a  
16 hearing of an application for preliminary  
17 injunction, the Court may order the trial of  
18 the action on the merits to be advanced and  
19 consolidated with the hearing of the  
20 application."

21 And I think I understand why. Goes to the  
22 issue of efficiency; right?

23 MR. ALDRICH: Sure.

24 THE COURT: So where do we go from here?  
25 Because those are my thoughts. And for the record, I



1 haven't made any decision. That was a lot.

2 MS. HOLBERT: I don't think we're opposed  
3 with, you know, with consolidating the evidentiary  
4 hearing with that.

5 Another issue that is on calendar today is a  
6 status check regarding that evidentiary hearing.

7 Because, of course, we need to finish that.  
8 So it's hard to talk about when we're going to set a  
9 trial when we don't even know when the evidentiary  
10 hearing is going to be done.

11 THE COURT: I agree, ma'am. I do.

12 MS. HOLBERT: Right. So I don't know really  
13 what we take first, but if we're still doing the  
14 evidentiary hearing in January, and haven't done some  
15 of the other stuff, I don't know how we can do trial in  
16 February.

17 THE COURT: I understand, ma'am. I do. I get  
18 it.

19 MR. ALDRICH: Yeah. So my concern comes with  
20 a couple of things. Number one, right now, experts are  
21 set. Initial expert disclosure is March 5 of 2020,  
22 which is just a little under five months away.

23 You know, we can move that up a little bit,  
24 but I remind the Court we've still got discovery  
25 battles to fight. If I lose those discovery battles in

1 a couple of weeks, then that may change a little bit.  
2 But if I win and the Court gives them a reasonable  
3 amount of time to provide the information I'm asking  
4 for, that's going to push us, I'm assuming, you know,  
5 close to the end of the month of November, or something  
6 to that effect. I've got to have time to get that  
7 stuff together, get experts and all that kind of stuff.  
8 So that's where my concern comes.

9           You know, I'm fine with the current dates. I  
10 understand why defendants wouldn't be. At the same  
11 time, as the evidentiary hearing goes forward, I got to  
12 be able to have discovery.

13           THE COURT: I'm not going to side step the  
14 process.

15           MR. ALDRICH: I will -- correct. And I will  
16 tell the Court my reading of Rule 65(a)(2), and I did  
17 some research. I -- maybe 20 minutes, 30 minutes, just  
18 to see what I can see about it. And really all I found  
19 is it's the Court's discretion to do that.

20           And then it -- but it appears to me to be a  
21 combining of trial and the evidentiary hearing.

22           THE COURT: That's -- I agree with all that.  
23 I do.

24           MR. ALDRICH: Right.

25           So that's how I read it, which then leads to

1 this discussion where I'm saying I'm fine with the  
2 dates as they are. But if we're going to move it, it's  
3 got to be a practical amount of time to give us, you  
4 know, a way to get it all done. And then -- and I just  
5 have -- I just have a block of time. At the end of  
6 April and early May, I can't have a trial, so ...

7 THE COURT: I understand.

8 MR. GREER: I can -- just two cents here.

9 And I also did a little bit of research on  
10 this. It looks like the Court has discretion at the  
11 end of this, of the evidentiary hearing, if the Court  
12 looks like at that point in time it's got enough  
13 evidence to make the decision that we made at trial, it  
14 can be done.

15 And I think as we move forward here, I think  
16 it's highly likely that by the time we get through this  
17 preliminary injunction evidentiary process, your Honor  
18 is going to have everything before the Court that it's  
19 going to need to make that decision.

20 I don't see that -- I know we're talking about  
21 discovery. This is all, in my opinion, extraneous  
22 stuff because the real evidence is going on the stand,  
23 and your Honor is going to have it. And that rule is  
24 there so we don't have to put it on twice. And so  
25 it's -- I think it's -- it would be more powerful then,

1 you know, summary judgment motion. But I do think if  
2 the evidence plays out the way I believe it's going to  
3 be, I think your Honor is going to be in a position  
4 where you can do that, and not only make a ruling on  
5 the preliminary injunction, but concurrently make a  
6 ruling on the case. And that's I -- we would prefer  
7 that. The sooner the better.

8           So -- and, I guess, that, again, would be  
9 answered as we go forward, because I think Mr. Aldrich  
10 is going to do a good job here and put on all the  
11 evidence that support his, you know, fraud in the  
12 inducement claim and all of his other causes of action  
13 in order to get that preliminary injunction ruled on in  
14 his favor, and in doing so I think he's going to show  
15 all his cards. And at that point in time I think the  
16 Court is going to be able to rule on behalf of the  
17 defense, particularly LVD Fund on the issues involving  
18 the loan. And we would encourage that.

19           THE COURT: Interesting.

20           MR. GREER: The Court has given notice to  
21 everybody, so everybody has adequate notice if the  
22 Court does that, makes that kind of decision.

23           THE COURT: What about -- and there's another  
24 reason why I didn't think it would be -- represent a  
25 significant problem in this specific case. Because

1 it's my understanding, Mr. Aldrich, you've already  
2 retained some experts; right?

3 MR. ALDRICH: I have.

4 THE COURT: Yeah, one specifically related to,  
5 I guess, the interpretation of the contract and/or  
6 construction loan agreement and whether there's been  
7 compliance or not. That's my understanding. Is  
8 that --

9 MR. ALDRICH: Well, I have -- I have --

10 THE COURT: Whether --

11 MR. ALDRICH: I've submitted a declaration  
12 from an EB5 expert.

13 THE COURT: Right.

14 MR. ALDRICH: And I've submitted reports, the  
15 jobs report. I'm -- I -- I've got a financial expert.  
16 I haven't produced a report from him yet because I  
17 don't have all the information that I need.

18 Am I missing anything?

19 So that's it so far.

20 THE COURT: So, I guess your most significant  
21 concern would be regarding the financial expert,  
22 without enough information?

23 MR. ALDRICH: Yeah. I mean, right now that's  
24 my biggest concern. And because experts aren't due for  
25 a long time, I haven't done a formal --

1 THE COURT: I understand.

2 MR. ALDRICH: -- you know, sit down with them,  
3 make sure they have every single thing they need and  
4 all that kind of stuff. I mean, we're still in the  
5 process of that, but it's -- I mean, it's happening.

6 MR. GREER: It's really just administratively  
7 tabulating things because Front Sight knows every penny  
8 that it gave to the defendants. It knows what its  
9 alleged damages are. It's in control of that  
10 information.

11 So even that is an easy issue to deal with.  
12 And you want to make -- for the record, your Honor,  
13 those -- the declarations are hearsay and should not be  
14 admitted thus far. I think if counsel got his expert  
15 on the stand and -- as he should, then it would be  
16 admissible.

17 THE COURT: Don't worry about that. I mean, I  
18 get that.

19 MR. GREER: Yeah. I mean that's dangerous.

20 THE COURT: Don't worry about that. Those  
21 are -- I guess, you know, number one, the reports don't  
22 get admitted into evidence. Many times lawyers don't  
23 take depositions of experts because they want to limit  
24 them to what's contained in their report. And I get  
25 it. But you got to have live testimony. I understand.

1 So I'm not worried about that.

2           And you shouldn't have that concern. I mean,  
3 ultimately, at some point if there are experts to  
4 testify during our journey, they will, of course, have  
5 to meet all the requirements under Hallmark. They do.  
6 And -- and if they give you standard of care,  
7 compliance, causation-type opinions or whatever it  
8 might be, I understand that. So we're not going --  
9 once again, I'm not going to rush to judgment. I've  
10 never been reversed on rushing to judgment. I believe  
11 in due process. I don't mind saying that.

12           So is this something we should visit a little  
13 later? But I think there is -- even if we do that, we  
14 still have to decide because this -- this is flowing in  
15 now to the motions for protective order and/or motions  
16 to compel; right? Because at the end of the day we  
17 have to make a -- I have to make a determination on  
18 discovery. And, I guess, the quicker specific  
19 documents get in the hands of the plaintiff's expert,  
20 it will, of course, accelerate the ability to prepare  
21 for the ultimate determination; right?

22           Do you agree with that, Mr. Aldrich?

23           MR. ALDRICH: Yes.

24           THE COURT: Okay. So what do we --

25           MS. HOLBERT: I think, your Honor, if we can

1 just leave the dates as they are right now, you file a  
2 joinder on behalf of the counter-defendants to the  
3 current cases in a joint case conference report, and  
4 then we revisit the issue.

5 But then we also need to set a continued date  
6 to get a plan to finish the evidentiary hearing.

7 THE COURT: Right.

8 MS. HOLBERT: Will that work?

9 MR. ALDRICH: That's fine with me. We're here  
10 in two weeks, or we can set a different one after that.  
11 Two weeks may not be soon enough to make that --

12 MS. HOLBERT: To do what?

13 MR. ALDRICH: To discuss what we're doing on  
14 the rest of the individual --

15 MS. HOLBERT: We just need a date, right?  
16 From the Court. The Court's availability, right?

17 THE COURT: Right. Right.

18 MS. HOLBERT: Because you're not done, right?

19 MR. ALDRICH: I'm not done, that's correct.

20 THE COURT: They're not done.

21 How many days has it been now?

22 MR. ALDRICH: We've had four days of  
23 testimony. One of them was real short, but four days.

24 MS. HOLBERT: And that's not on the 23rd,  
25 right? That's just a law and motion calendar on the



1 23rd.

2 MR. ALDRICH: Correct.

3 THE COURT: Right.

4 How much more time do we anticipate,  
5 Mr. Aldrich, as far as how many more days do you need?

6 MR. ALDRICH: Well, Judge, I got some experts  
7 I got to call. And I don't have the discovery. I  
8 mean, I realize it's a preliminary injunction hearing,  
9 but the case has been pending over a year now. And  
10 I -- I mean, we'll get to this in a couple weeks when  
11 we come, but I've been waiting for supplemental  
12 disclosures or a supplemental response or something for  
13 months, with promises that they were coming, and then  
14 they haven't come.

15 And so, you know, I mean, certainly another  
16 day, maybe longer. But again, I mean, this --

17 THE COURT: Should we decide this on the 23rd?

18 MR. ALDRICH: Probably.

19 THE COURT: And I think for the 23rd, should  
20 we set a status check for setting additional days for  
21 the evidentiary hearing and testimony?

22 MR. GREER: What was that?

23 THE COURT: You're going to be here on the  
24 23rd, at least for now. Assuming you're not in trial.  
25 If you're in trial, Mr. Greer, I get it. We'll just

1 move it to a time convenient for everyone. And I hate  
2 kicking the can down the road, but there still are a  
3 lot of balls in the air, I think, right now.

4 MR. ALDRICH: Yes, please.

5 THE COURT: And then they're going to have to  
6 fall ultimately.

7 But on the 23rd, we should plan on setting  
8 more days for testimony, right? Within the next --  
9 within that next month or so.

10 MR. ALDRICH: That's fine.

11 THE COURT: And maybe get everything  
12 potentially done, except for experts. And maybe if we  
13 can -- I'm not sure. But we'll talk about that on the  
14 23rd, but we should definitely set a plan for -- for  
15 who's anticipated the next witnesses will be and have a  
16 time set for those witnesses.

17 MR. ALDRICH: Okay.

18 THE COURT: So, Ms. Holbert, do you agree?

19 MS. HOLBERT: Yes. Thank you, your Honor.

20 THE COURT: Okay. All right.

21 You got that? Status check regarding dates  
22 for the evidentiary hearing schedule.

23 To my understanding, we might want it -- it  
24 might be premature, but I'd love to get that set.

25 So what do we have left now? Pending motions;

1 right?

2 MR. ALDRICH: We have two. Well, it's two  
3 issues, but it's the -- they filed eight motions to  
4 quash. I filed an omnibus opposition, so there's that  
5 set. And then there's a set. I filed a motion to  
6 quash related to some subpoenas that they sent out. So  
7 we can start with theirs because they came first.

8 THE COURT: Okay.

9 THE COURT REPORTER: Should we take a break  
10 now, Judge.

11 THE COURT: If you need a break, we can take a  
12 break.

13 What we'll do, we'll come back about 3:05 or  
14 so. No later than 3:10.

15 We'll take a break, ma'am.

16 -o0o-  
17 (Recess)  
18 -o0o-

19 THE COURT: Okay. I guess next we go to the  
20 motions to quash; right?

21 MR. ALDRICH: That's correct.

22 MR. GREER: Yes, your Honor.

23 THE COURT: Motion to quash.

24 MR. GREER: Your Honor, to help us get through  
25 these in an efficient fashion, I've broken them down  
into three categories.

1           You have subpoenas that Front Sight has issued  
2 to Empyrean West, J. Carter and David Keller.

3           THE COURT: I'm ready when you are, sir.

4           MR. GREER: Okay.

5           Your Honor, this is -- Empyrean West is a  
6 company that Mr. Dziubla was associated with prior to  
7 his involvement with Front Sight. It involves the use  
8 of EB5 capital regarding the San Diego Hyatt project.  
9 There's been testimony from Mr. Dziubla on the stand  
10 and the various declarations that this was his prior  
11 EB5 experience directly with the raising and developing  
12 of that property.

13           So arguably there would be some relevance to  
14 information confirming that he was associated with this  
15 and that he had this EB5 experience. However, the  
16 problem we have with the subpoenas is they are just way  
17 too broad.

18           If we go to -- the Exhibit A's are the same on  
19 each of the three subpoenas: The Keller, Carter and  
20 Empyrean. So they just ask for the exact same  
21 information just from different parties.

22           The Question Number 1 is: Provide all  
23 documents you possess or control showing communications  
24 between any employee, officer, member, manager, agent,  
25 or principal of Empyrean West and Robert Dziubla, John

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1 Fleming, Kenworth Capital, Legacy Realty Company, Las  
2 Vegas Development Fund pertaining to the San Diego  
3 Hyatt project" for which Emyrean West raised EB5  
4 (indiscernible) investors through Liberty West Regional  
5 Center.

6 Way overbroad. The burden it would put on  
7 Emyrean would be overwhelming and not relevant for the  
8 most part. If it was specifically tailored to identify  
9 what Mr. Dziubla's position was or relationship was,  
10 what functions he was responsible for, what he was  
11 involved with, they would arguably have some relevance.  
12 It's just this takes in everything under the sun and  
13 needs to be quashed. For that reason, it's just --  
14 it's just uncontrollably broad.

15 The second one suffers from the same problem.  
16 The second one is even more broad, in fact, because it  
17 asks for:

18 "All communications, all documents you  
19 possess controlling, showing communications of  
20 any type between any employee, officer, member,  
21 manager, agent, or principal of Emyrean West  
22 and Robert Dziubla, John Fleming, Kenworth  
23 Capital, Legacy Realty Capital, Linda Stanwood,  
24 EB5 Impact Advisors, EB5 Impact Capital  
25 Regional Center, Las Vegas Development Fund,

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1           LLC, from March 2012 forward."

2                   Again, incredibly overbroad, covering  
3 potentially privileged things affecting the privileges  
4 of third parties, potential attorney-client privilege  
5 material. It's just way, way too broad and  
6 unmanageable.

7                   The third one is all documents showing  
8 communications between you and all those same players  
9 again. So that's for the same thing, again with no  
10 subject matter at all.

11                   And then the last one:

12                   "Provide any documents you possess or  
13 control regarding the Front Sight project and  
14 the EB5 fundraising that sought investors from  
15 the Front Sight project by and through EB5  
16 Impact Capital."

17                   Now, there may very well not be any documents  
18 in that category because they weren't involved in it at  
19 all, but as phrased it -- it has the same concern as  
20 we've seen in the past, where Front Sight is trying to  
21 get its hands on very important, guarded -- jealously  
22 guarded proprietary information about the names and  
23 contact information of LVD Fund's investors, its  
24 brokers, its agents. When we said in this court  
25 before, the problems that LVD Fund had with Mr. Piazza

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1 and Front Sight getting that information on some of the  
2 brokers and going directly to them, trying to end run  
3 around them in order to go directly to the investor,  
4 the brokers rather than deal with LVD Fund.

5           This is what gives LVD Fund value is its  
6 contacts with these agents, its knowledge of who they  
7 are, what their contacts there are, what money they  
8 have available, et cetera. And giving that up would be  
9 very, very detrimental to LVD Fund in general, but in  
10 particular to Ignatius Piazza because -- and I haven't  
11 conferred with Mr. Aldrich and discussed the  
12 possibility of a protective order because oftentimes  
13 that helps out.

14           But it doesn't work here because Ignatius  
15 Piazza is involved, and I think it's clear from his  
16 actions that he doesn't care what the Court says. He's  
17 not going to care about a protective order. He's going  
18 to take these things, and he's going to use them to his  
19 advantage. He's already sent damaging correspondence  
20 directly to the handful of brokers that he has the  
21 contact information for.

22           So, again, as to this particular group of  
23 individuals that are being subpoenaed, that may not be  
24 anything that falls under that for Request No. 4, but  
25 to the extent they are, we object because they would

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1 not have a right to that information.

2           So that is the first group. It might be  
3 easier just to do these as a group at the time. I  
4 suggest, your Honor, that Mr. Aldrich -- unless your  
5 Honor has some questions for me, that Mr. Aldrich maybe  
6 address these three, and we get them handled.

7           THE COURT: Okay.

8           MR. ALDRICH: Thank you, your Honor.

9           I guess I have to start with Mr. Greer and I  
10 did talk about protective orders and an order from the  
11 Court that we not share this information except  
12 outside -- or I'm sorry, except within the litigation.  
13 He made that same statement to me about Dr. Piazza. I  
14 just have to address that initially.

15           There's -- Dr. Piazza has complied with all  
16 court orders in this case. He hasn't been ordered not  
17 to do anything. He hasn't done anything he was ordered  
18 not to do. So -- and interesting that defendants come  
19 in and say that because we've got a court order for an  
20 accounting. We didn't get a full accounting. And then  
21 they filed his tax returns in the open forums, some  
22 different things like that.

23           So if that's the basis for the objection, then  
24 we should get the information. The Court can order  
25 that we can't use it except in the litigation, and off



1 we go.

2           But let me address these points here. The  
3 first point that I mentioned was the -- that the  
4 motion's late. And so procedurally the Court, you  
5 know, can deny and allow the discovery right off the  
6 bat.

7           But with J. Carter, Dave Keller, and Emyrean  
8 West, the Court may recall that Mr. Dziubla represented  
9 a couple of things significant. One was that they  
10 weren't together on the San Diego Hyatt project, which  
11 ultimately Mr. Dziubla certainly admitted, never went  
12 anywhere, but he represented them as partners early on  
13 for starters. He also represented them as the only  
14 ones allowed to do EB5 fundraising in Viet Nam. Those  
15 are all significant related to the fraud claims.

16           The other thing is that there -- these are  
17 actually narrowly tailored. We're asking for  
18 communications that they possess or control -- I'm  
19 looking at No. 1. -- between any employee, Mr. Greer  
20 went through it, of Emyrean West and Robert Dziubla, a  
21 party to this litigation.

22           John Fleming, a party to this litigation, and  
23 the other person who was supposedly out raising money  
24 with my client's money.

25           Kenworth Capital, Inc. Well, that is

1 Mr. Dziubla's company. He testified as much that one  
2 of the first engagement letters is on Kenworth Capital  
3 letterhead.

4 Legacy Realty Capital. My understanding is  
5 that that this Mr. Fleming's company.

6 So again, I haven't even gotten outside of any  
7 parties yet.

8 No. 5, Las Vegas Development Fund. Also a  
9 party.

10 Rule pertaining to the San Diego Hyatt  
11 project. That's -- that's it. That is narrowly  
12 tailored.

13 There hasn't been an argument that that's so  
14 many documents it's overly burdensome. And we're at an  
15 interesting position because I put in my pleadings that  
16 they don't have standing to object to these.  
17 Interestingly enough, when we argue the next motion, we  
18 have to deal with that issue for myself.

19 But nonetheless, since that's the main  
20 objection is that it's overly burdensome, then that's  
21 why I addressed them individually.

22 But that No. 1 is a narrowly tailored request.

23 Now, No. 2 admittedly is a little bit broader  
24 because it doesn't limit it to the San Diego Hyatt  
25 project, but it is limited in time from March 2012 to

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1 present day, which is the relevant time frame. I  
2 suspect -- again, we haven't had an argument that this  
3 is a huge amount of the documents. I suspect there  
4 probably aren't that many documents, certainly from the  
5 2014 or 2015 time forward, but we're certainly entitled  
6 to discover these things. Remember, I know the Court  
7 knows this already, but whether these become admissible  
8 or not is one thing; discoverability is broader than  
9 admissibility anyway.

10           The next thing, the request was communications  
11 between at least these three: Dave Keller, J. Carter,  
12 or Emyrean West between you and Robert Dziubla, a  
13 party; John Fleming, a party; Kenworth Capital,  
14 Mr. Dziubla's company; Legacy Realty Capital,  
15 Mr. Fleming's company; Linda Stanwood, also a party;  
16 EB5 Impact Advisors, LLC, also a party; EB5 Impact  
17 Capital Regional Center, also a party; and Las Vegas  
18 Development Fund, from March 2012 to the present.  
19 Relevant time frame.

20           The last one:

21           "All documents you possess or control  
22           regarding the Front Sight project and the EB5  
23           fundraising that sought investors for the Front  
24           Sight project by and through EB5 Impact Capital  
25           Regional Center, LLC."

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1           Now, this one is important because there were  
2 representations, number one, that this was the only  
3 project that they were working on, even though  
4 apparently there was also a San Diego Hyatt project  
5 going on at the same time.

6           We continued to hear about the proprietary  
7 nature of the jealously guarded information about  
8 investors. And I guess a couple of points on that real  
9 quick. Number one, we're a year in the litigation. We  
10 continue to hear this is proprietary. It's privileged.  
11 We have no citation to authority why it's privileged.  
12 I've addressed in my brief this trade secret argument  
13 that they've made. It's not a trade secret. This is  
14 information that has to be provided to the USCIS.

15           MR. GREER: Lacks foundation.

16           I'm sorry, it does have to be provided. I  
17 withdraw that objection.

18           THE COURT: Okay.

19           MR. ALDRICH: It has to be provided to the  
20 USCIS. Now, I cannot stand here and tell the Court  
21 that I'm going to get it from the USCIS. I did a FOIA  
22 request a long time ago, and I don't have it back. And  
23 it's hard for me to get a status on it. So I don't  
24 know what the USCIS would give me, but that information  
25 certainly goes to the USCIS.

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1           Again, if the Court wants to order me and my  
2 client that we're not able to utilize that information  
3 outside of this litigation, I can accept that. And  
4 we'll properly advise my client, and I know he will  
5 abide by the Court's order.

6           And the other thing that's -- it hasn't  
7 happened yet, and I think is going to have to happen,  
8 is we continue to hear about the immigrant investors  
9 that we have to protect. We haven't actually seen any  
10 evidence there are immigrant investors. We're all  
11 assuming that there are. But at some point that has to  
12 happen, too, because this is supposed to be under the  
13 EB5 program. There are supposed to be investors there.

14           And, by the way, as the motion that I just  
15 filed the other day talks about, there's a dispute on  
16 whether they -- whether Front Sight can pay off this  
17 loan or not. There is a prepayment provision in the  
18 contract that allows for it. But it can't, under  
19 certain circumstances, relate it to the investors.

20           So we have to somehow find a way to make this  
21 work that continues to be objected to and we're not  
22 getting information. We've got to be able to have that  
23 information. The Court needs that information because  
24 we've got money that we're trying to get ahold of to  
25 resolve all this stuff and we need to figure out where

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1 all that goes.

2           So with regard to these three that we've  
3 talked about -- Dave Keller, J. Carter, and Emyrean  
4 West -- those are proper subpoenas. They're narrowly  
5 tailored. And we're entitled to that information.

6           One other thing I want to address. Mr. Greer  
7 didn't address it, and I'm not entirely sure if -- if  
8 there's an objection or not, but I did a note -- all of  
9 them are served with notice -- well, I'm sorry. Let me  
10 back up.

11           They weren't served. We also intend to  
12 subpoena them for deposition testimony, and we included  
13 some topics for a PMK. Those haven't been addressed by  
14 Mr. Greer, but it's -- they're very similar. And I  
15 think the same arguments apply. We think we are  
16 entitled to issue these subpoenas and take this  
17 discovery.

18           Does the Court have any questions for me?

19           THE COURT: No, sir.

20           MR. ALDRICH: All right. Thank you.

21           MR. GREER: I want to gather that Mr. Aldrich  
22 is saying these are narrowly tailored because they're  
23 limited to correspondence involving parties to the  
24 litigation.

25           That is not narrowly tailored. Just because

1 they are a party to this litigation doesn't mean that  
2 any correspondence they ever did in the past is all of  
3 a sudden discoverable from third parties. You know, we  
4 need to keep in context here this is third party  
5 discovery. One, they have to make a showing that they  
6 can't get it any other way. They haven't made any  
7 efforts to do that.

8           Two, this privacy issue, there's no argument  
9 here as to why they need the names of the investors,  
10 why they need the names of the brokers. And there's no  
11 evidence that the brokers are ever disclosed in any of  
12 the USCIS documentation. So this -- this isn't  
13 information that they would have a way to get through  
14 any source. It's very, very protected by LVD Fund, and  
15 actually anybody in the EB5 business who has  
16 relationships with brokers.

17           With regard to the EB5 investors having to  
18 come forward, they don't. The money here is lent by  
19 LVD Fund. The money gets paid back to LVD Fund. It  
20 then goes to the EB5 investors. This is all regulated  
21 through the USCIS. I don't think Mr. Aldrich is  
22 seriously saying that there aren't EB5 investors  
23 involved here.

24           Also there is another reason for privacy with  
25 the investors is there's a potential for repercussions

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1 in their own country. Remember, they're trying to  
2 escape countries. And thus have an interest in keeping  
3 their interest, their identity from being publicly  
4 discussed in their home countries where it could  
5 cause -- they can have repercussions from that.

6 And what's missing from this whole picture is  
7 why do they need the names? Why do they need the names  
8 of brokers? Why do they need the names of investors?  
9 That really isn't even an issue here.

10 If these documents -- any documents that were  
11 produced would necessarily have to be redacted, and  
12 that would not take away any of the value. Because the  
13 only thing of relevance here is was Mr. Dziubla  
14 involved in this and what was his experience. So I  
15 think these are all way overbroad, your Honor. They  
16 bring in privileged proprietary information and  
17 potential attorney-client privileged information as  
18 phrased. And the motion to quash should be granted.

19 With regard to timing under Rule 26, these are  
20 timely and the Court has the discretion to consider  
21 them anyway.

22 So at this point in time I would ask that just  
23 the whole thing be quashed, counsel be directed to  
24 draft more narrowly tailored requests.

25 THE COURT: What would be more narrowly



1 tailored?

2 MR. GREER: Well, what -- they're not just --  
3 you can't just narrow it to the party, to the subject  
4 here.

5 Documents identifying Mr. Dziubla's position  
6 with the company. Documents, you know, identifying  
7 projects he worked on.

8 Really this -- all that they need to confirm  
9 or deny is whether or not he was involved with that  
10 project. And without crawling into another company's  
11 business who is not a party to this lawsuit, they could  
12 do it with a very narrowly tailored request that says  
13 documents identifying Mr. Dziubla's association and  
14 involvement with the company excluding information  
15 relating to names of investors and brokers. That, I  
16 think, would come very, very close to that.

17 Right now it asks for, you know, if you sent  
18 birthday cards, it would be covered, or well wishes, or  
19 vacation discussions. I mean, they're just incredibly  
20 broad. They should be narrowed by issue not just by  
21 the party.

22 THE COURT: And I look at Exhibit A to  
23 defendant's motion to quash subpoena for deposition and  
24 documents to Emyrean, I'm looking at No. 1. He does  
25 list out -- he's looking for communications between

1 employee, officers, members, managers, agents, and  
2 principals of Emyrean West, LLC.

3           And he sets forth the names of specific  
4 individuals, and then limits it to the San Diego Hyatt  
5 EB5 project of which Emyrean West raised investment  
6 funds.

7           What's specifically wrong with that?

8           MR. GREER: Number one?

9           THE COURT: Yeah.

10           MR. GREER: So all documents, communications  
11 between anybody at Emyrean West and all these list  
12 of -- list of the entities pertaining to the project  
13 for which Emyrean West raised funds from EB5 during  
14 investors, literally, your Honor, that would mean that  
15 any type of internal communication, marketings that --  
16 marketing solicitations and attorney-client privilege  
17 communications.

18           Irrelevant social communications. It doesn't  
19 ask by topic. It just -- it asks for any communication  
20 with anybody at that company with any of these people.  
21 What -- what kind of burden are you going to be placing  
22 on this -- this company. And what's -- there's no  
23 showing of any relevance to any of it, other than what  
24 was Mr. Dziubla's job there.

25           THE COURT: Well, I think what it is -- and

1 correct me if I'm wrong, Mr. Aldrich is looking for his  
2 pre-history and experience in EB5 funding; right?

3 MR. ALDRICH: Correct.

4 MR. GREER: And, again, your Honor, that's  
5 part of the issue really here is, your Honor, is to  
6 just repeat this, it's very, very important. It would  
7 be -- it would discuss brokers and investors,  
8 Mr. Dziubla's efforts to reach out to brokers, do  
9 business with brokers. It would identify his business  
10 model. It would disclose to Front Sight, very, very  
11 strictly guarded proprietary information.

12 Now, again, if it was excluding their names,  
13 if they just want to know was -- I don't even know how  
14 it's relevant. But if Mr. Dziubla has communications  
15 with investors in an EB5 project, before he came across  
16 Front Sight folks, how would it even be relevant here,  
17 other than the existence of Mr. Dziubla having  
18 experience. You don't need the names. You don't need  
19 the contact information from brokers for people that he  
20 was developing as his base for soliciting EB5  
21 investment proceeds.

22 If I can imagine how they're going to do this,  
23 your Honor, this company, are they going to go between  
24 every employee, officer, member, manager, agent or  
25 principal, and then identify all communications with

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1 each one of these separate individuals.

2 THE COURT: I would think, I would think they  
3 have a file.

4 MR. GREER: I'm on communications of Front  
5 Sight defendants?

6 THE COURT: Well --

7 MR. GREER: You know, it's not -- it's going  
8 to be -- and it's open ended. For how long? There's  
9 no time frame on it.

10 MR. ALDRICH: Your Honor.

11 THE COURT: Yes.

12 MR. ALDRICH: Number one, on here, it is --  
13 this one -- Mr. Greer, actually addressed No. 2.

14 No. 1 is related to the EB5 San Diego Hyatt  
15 project.

16 THE COURT: Right.

17 MR. ALDRICH: I don't know how long that  
18 lasted. I mean, Mr. Dziubla admitted that it didn't go  
19 anywhere. So, you know, I don't know how much it is,  
20 but they haven't made an offer of proof that it's any  
21 significant amount either. Honestly, that is what  
22 Empyrean West would do when they were served with it.  
23 If they come back and say, It's 7,000 pages of  
24 documents, then we have a different issue.

25 But that isn't what we're here talking about.

1 We're here talking about is this sufficiently tailored,  
2 narrowly tailored to seek discoverable evidence? And  
3 the answer to that is yes.

4 MR. GREER: If I may. My question is why, why  
5 is it relevant?

6 THE COURT: I think it goes -- I mean, I  
7 don't -- based upon what I know about the case, I  
8 assume he's making -- this might go to the fraud in the  
9 inducement issue.

10 MR. ALDRICH: Absolutely.

11 MR. GREER: To the extent that he was involved  
12 with the project, yes. I mean, did he have experience?  
13 Did he work with them? What was the EB5? But they  
14 don't need the names of the brokers that he dealt with  
15 and the investors he dealt with, your Honor. That  
16 doesn't -- that doesn't add anything to the case. If  
17 there -- if there are communications between  
18 Mr. Dziubla and brokers, or between other Emyrean  
19 people and Mr. Dziubla and brokers, the identity of the  
20 broker doesn't matter. The fact that the communication  
21 was made would show that he was involved in the  
22 process. But there's no evidentiary value in  
23 identifying the name of the broker that was involved,  
24 and there is a very strong proprietary interest in  
25 keeping that secret, confidential.

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1           So if this was tailored, one, as to time, it  
2 would be a significant limitation; two, to exclude the  
3 names of investors and brokers, which are proprietary,  
4 that would at least limit the damage that would be  
5 caused by this incredibly overbroad request.

6           If, with those limitations, the company then  
7 could put the objection on to the extent to which it  
8 was overly burdensome, but we're here today to protect  
9 Las Vegas Development Fund, Mr. Dziubla, Mr. Fleming,  
10 Kenworth Capital, and EB5, EB5 Impact Capital, the  
11 Regional Center of Front Sight getting access to  
12 proprietary information. It's not necessary for its  
13 case, but is damaging to the defendants.

14           MR. ALDRICH: Your Honor, here's an  
15 interesting thing. Listen, I hope that your Honor can  
16 see that inside I'm like jumping up and down, okay,  
17 because this -- think about these arguments. The  
18 argument is, We don't want Front Sight to know if we  
19 had any brokers in place in 2012 or 2013 or 2014. Why?  
20 Because I don't think there are any. Why does that  
21 matter? Because the representations are that they were  
22 raising tens of millions of dollars for an EB5 funding  
23 for the San Diego Hyatt project, that they have a vast  
24 network of agents and people. They're going to just  
25 bring them in, at the beginning, four or five months,

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1 and promises by Thanksgiving day and all these  
2 different things. It makes no sense.

3           They would -- should have wanted to go, here  
4 yet, your Honor, make an order that we can't use it  
5 anywhere outside of this litigation, but we're going to  
6 show you this, Mr. Dziubla is telling the truth. But  
7 that's not what is happening. It's hide and obfuscate,  
8 and don't show our hand, and don't give anything, and  
9 it's continued objections to every single thing. And  
10 that is not going to fly.

11           And with respect to Mr. Dziubla, he's sitting  
12 here, and I say these things about him and it bothers  
13 me that he's here listening to me say it, but I'm not  
14 going to trust if your Honor let's him or has someone  
15 else redact documents. He threw away the EB5  
16 documents. Threw them away. Hasn't provided a proper  
17 accounting. We're not taking their word for anything.  
18 This is absolutely 100 percent talking about, number  
19 one, it is easy, no brainer, relevant.

20           MR. GREER: Your Honor --

21           MR. ALDRICH: And discoverable.

22           MR. GREER: He's -- we'd love to let -- if  
23 there was a broker involved, the fact that there was a  
24 broker involved, is relevant. He should have a right  
25 to it. The identity of that broker is what is the

1 problem here. Because it is proprietary information.

2 Now, if they were properly redacted with  
3 initials where you can get the substance of the -- in  
4 fact, the way to go would probably be to allow it to be  
5 redacted, and then if -- if there's a need to have it  
6 disclosed, come before this Court and say, Okay. Your  
7 Honor, I -- I now have a reason that I need to know the  
8 identity of this broker, and here it is. But right now  
9 all they need to know is did Mr. Dziubla have  
10 interaction with brokers. They can get that with the  
11 broker's name redacted with only the initials and some  
12 non-identifying information so that Mr. Piazza, who, as  
13 the Court knows -- I've had a prior class action with  
14 him, I work with him well, and dealt with him in the  
15 past and know what he does.

16 I think this Court has also seen his -- his  
17 alerts that he sends out to all his members, talking  
18 about things that happens in this courtroom. He's not  
19 able to be controlled. And so we want to give it to  
20 plaintiffs --

21 THE COURT: I actually haven't looked at any  
22 of that. I don't look -- I just focus on what's in  
23 front of me.

24 And here's my point. I mean, it appears to me  
25 what Mr. Aldrich is attempting to do, and I think what



1 any lawyer would try to do when it comes to certain  
2 aspects of the case, he wants to know, I mean, really  
3 and truly, Okay. You worked on the San Diego Hyatt EB5  
4 project. Show me what you wrote. Show me what you  
5 did.

6 MR. ALDRICH: Sure.

7 THE COURT: Isn't it really that simple?

8 MR. ALDRICH: Sure. It is.

9 MR. GREER: They should have a right to that.

10 MR. ALDRICH: And Mr. Keller and Mr. Carter, I  
11 believe attended a meeting early on as well that had to  
12 do with this. And then that's the information that I'm  
13 looked for.

14 And just to address this proprietary issue  
15 again, okay. Mr. Dziubla testified, he sat right there  
16 in that chair, and he said he's not marketed this  
17 project since the end of 2017. That is almost two  
18 years ago. So I don't know what we're protecting in  
19 proprietary fashion. This is the only project they're  
20 working on.

21 MR. GREER: That's not true.

22 MR. ALDRICH: That's exactly 100 percent true.  
23 I can pull it up.

24 THE COURT REPORTER: I need one at a time.

25 THE COURT: One at a time.

1 MR. ALDRICH: But this whole, It's all  
2 proprietary -- but, again, there's an easy fix to that.  
3 It's easy. The Court says, Mr. Aldrich, I'm going to  
4 let you try to get this information. And it's going to  
5 be restricted. You can only use it in this case. Your  
6 client can only use it in this case. You're not to go  
7 publish it out in the world.

8 That's very easy, and I'm willing to do that.

9 MR. GREER: See, but, your Honor, this case  
10 is, Let's call these people and talk to them about this  
11 litigation.

12 And then -- and undermine -- we already know  
13 that he's attempting to squeeze off the income from LVD  
14 Fund by not paying for all these months, and still not  
15 paying default interest.

16 He's a very aggressive and creative gentleman.  
17 And he will take that, and he will use it to his  
18 advantage, and they don't need it. They don't need the  
19 names. You only need the names you're going to contact  
20 those people, and they shouldn't be contacting them.  
21 So we need --

22 MR. ALDRICH: I'm not --

23 MR. GREER: So we should get them everything,  
24 but not the names of the brokers and the investors  
25 because that is proprietary and it will be misused.

1 MR. ALDRICH: I won't belabor the fact. The  
2 Court knows --

3 THE COURT: How can I -- how can I do that?  
4 What is the appropriate vehicle in place to even do  
5 that?

6 MR. GREER: Just with -- have they produced  
7 these documents, whatever you decide the scope is, with  
8 redacting the names of any brokers or investors that  
9 are involved. I mean, they have -- they have  
10 third-party privacy rights themselves also.

11 But here it's the most -- we're concerned  
12 about, in addition to that, is not letting Front Sight,  
13 Ignatius Piazza, get his hands on these because he will  
14 do something with them. And he doesn't need them. So  
15 we could just say, Produce it, redacting the names.

16 And then if Mr. Aldrich sees this and says,  
17 Hey, I need these names, we get a chance to meet and  
18 confer. We can get around that and just give them to  
19 you. If not come into court say, your Honor, Mr. Greer  
20 said we wouldn't need the names. I disagree. I need  
21 the names for this reason, and then the Court can make  
22 the ruling. Are we giving them carte blanche?

23 MR. ALDRICH: Am I going to get a chart that  
24 is blank?

25 MR. GREER: No. You would have -- with his

1 correspondence with just -- we could do it -- just give  
2 you the initials, and just do the initials of the first  
3 and last name, and -- so you can see --

4 THE COURT: How do we know that they will do  
5 that?

6 MR. GREER: Because it's proprietary to them  
7 too. They're going to be -- if we do this well here,  
8 maybe we'll avoid another, you know, motion to squash.  
9 But now it's going to go off to the producing party,  
10 and they're going to have to have a right to come in  
11 and do this.

12 MR. ALDRICH: One of the struggles here is  
13 that we don't know what there is. There could be  
14 nothing at all. Or there could be 7,000 pages. But  
15 that's why we get to ask, so that we can find out what  
16 is there.

17 MR. GREER: And if the names are redacted,  
18 doesn't matter whether it's zero or 7,000.

19 (Brief pause in proceedings.)

20 THE COURT: See, my concern, I was thinking  
21 about how to do this in such a manner where -- I don't  
22 know if, in the production of documents, we can rely on  
23 redactions from the source. I'm wondering if whatever  
24 is produced should be sealed. We bring them to open  
25 court and you can take a look at them without anyone

1 having access, except for the parties here. And if  
2 there is an issue and something should be redacted, we  
3 can redact the names at that time.

4 MR. GREER: Attorney's eyes only for that part  
5 of the process?

6 THE COURT: Any problem with that?

7 MR. ALDRICH: That would certainly give me an  
8 opportunity to look at it and make noise if I want to.

9 THE COURT: Right. And --

10 MR. ALDRICH: Yeah.

11 THE COURT: -- my point is this: You keep  
12 them sealed. When you get them back you come back here  
13 and -- or you could do it in your offices together, you  
14 know, or something like that. But I think potentially  
15 the documents could be, no question, relevant. I get  
16 the relevance issue.

17 MR. ALDRICH: Right.

18 THE COURT: But I was looking at it from this  
19 perspective: How do you even instruct them what to do?

20 Ms. Holbert, ma'am?

21 MS. HOLBERT: No, I agree. The problem,  
22 though, is depositions then. When are you going to  
23 take the deposition?

24 MR. ALDRICH: Yeah, we'll have to set the  
25 deposition for a later time, I guess.

1 THE COURT: Well, you want to read the  
2 documents.

3 MR. ALDRICH: Yeah.

4 THE COURT: And then maybe -- I mean, we don't  
5 know. What if there's no documents?

6 MS. HOLBERT: Right.

7 THE COURT: You going to take the deposition?

8 MR. ALDRICH: Well, I might.

9 THE COURT: Yeah.

10 MR. ALDRICH: Because there are going to be  
11 some facts.

12 So if I'm understanding, the suggestion then  
13 is so if I send the subpoena out and something comes  
14 back to my office, we will put it in the envelope. I  
15 will not look at it.

16 THE COURT: Or whatever you get from them it  
17 stays sealed.

18 MR. GREER: Stays in the envelope.

19 MR. ALDRICH: Okay. Fair enough.

20 MR. GREER: The instruction as to the  
21 producing party is to put it in a sealed envelope.

22 MR. ALDRICH: Okay.

23 MR. GREER: And put it in another in the mail  
24 and it remains sealed.

25 MR. ALDRICH: That's fine. And we'll hold

1 that until we can get together or come here to look at  
2 it.

3 MR. GREER: We can meet at his office.

4 THE COURT: I think that's the best way to do  
5 it, Mr. Aldrich.

6 MR. ALDRICH: Okay.

7 MR. GREER: So with that, though, even -- I  
8 guess, they're going to object to it. We can let them  
9 object over the breadth, I think, because they are  
10 still incredibly --

11 THE COURT: I mean, if you want to set a  
12 status check, we can bring them here, you can go out in  
13 the ante room and look at them. And if I have to issue  
14 an order immediately, I can do that.

15 MR. ALDRICH: We can coordinate that because  
16 there's a couple ways we can do it really. We can even  
17 call the law clerk or the JEA and ask about your  
18 availability.

19 THE COURT: Exactly.

20 MR. ALDRICH: And then just we can meet at my  
21 office or come here, either way, so that your Honor  
22 could do that with us. We can make that work.

23 MR. GREER: Okay.

24 THE COURT: Okay.

25 So that's regarding the Empyrean West; right?

1 MR. GREER: That also would apply to --

2 MR. ALDRICH: Keller and Carter.

3 MR. GREER: -- Keller and Carter.

4 THE COURT: Okay. So can you change the  
5 subpoena on that, sir? Can you adjust that --

6 MR. ALDRICH: Yes.

7 THE COURT: -- and make sure Ms. Holbert or  
8 Mr. Greer sees it before it goes out?

9 MR. GREER: I would ask that an instructional  
10 letter be included with that.

11 THE COURT: Yes.

12 MR. ALDRICH: Yes.

13 Does the Court wish for us to prepare an order  
14 or --

15 THE COURT: Yes.

16 MR. ALDRICH: -- is the transcript okay? You  
17 want an order?

18 THE COURT: Probably a simple order would be  
19 fine.

20 MR. ALDRICH: Okay.

21 THE COURT: It saves --

22 MR. ALDRICH: So --

23 THE COURT: Order signed off, filed. There's  
24 never any confusion after that, right?

25 MR. ALDRICH: Agreed. So what I'll do is I'll



1 prepare an order. So far we're only the first three,  
2 as to Keller, Carter, and Empyrean West. I'll run it  
3 by counsel. And then I will do a cover letter that it  
4 will include the order and the cover letter with the  
5 subpoena. Does that sound good?

6 THE COURT: And, I guess, the way to address  
7 the -- the motion would be granted in part, denied in  
8 part. Is that correct? Because we're not quashing the  
9 subpoena.

10 MR. ALDRICH: Correct.

11 THE COURT: We're modifying the subpoena.

12 MR. ALDRICH: Okay.

13 MS. HOLBERT: Yeah, the motion was to quash or  
14 for protective order. So the Court is entering a  
15 protective order.

16 MR. ALDRICH: Right.

17 THE COURT: Yeah.

18 MR. ALDRICH: So granted in part, denied in  
19 part, protective order as to what we've talked about.

20 THE COURT: Yes.

21 MR. ALDRICH: I'll get that in the order, and  
22 we'll follow that process. Is that okay?

23 MR. GREER: Yes. Yes. Okay.

24 THE COURT: All right.

25 MR. GREER: Affirmative.

1 THE COURT: So that one is done.

2 Let's move on to the next one.

3 MR. GREER: Yeah, three of them.

4 THE COURT: So next we're dealing with Bank --  
5 Open Bank, Bank of Hope, Signature Bank. Is that it?

6 MR. ALDRICH: Just give us just one second,  
7 your Honor.

8 MR. GREER: We do banks. We can do banks.

9 MR. ALDRICH: We can do banks. Okay.

10 MR. GREER: Your Honor, there were four  
11 subpoenas to banks. I think we have a lot of similar  
12 issues, with Wells Fargo being the first one I'd like  
13 to deal with.

14 Your Honor, as we've -- we've filed motions  
15 in -- as to each of these subpoenas discussing the  
16 protections afforded to financial information. These  
17 are -- this is financial information of a party before  
18 a judgment has been entered against the party.

19 And those are -- those are clearly protected  
20 unless directly relevant to the proceedings.

21 Now, Wells Fargo is the bank that's impact --  
22 EB5 Impact Advisors banked at. The Court ordered an  
23 accounting of that. All the bank statements have  
24 already been produced to Front Sight on that, along  
25 with additional documentation to promote or to support

1 the accounting.

2           So anything that would have to do with Wells  
3 Fargo at EB5 Impact Advisors has already been produced,  
4 and thus it would be -- there would be no reason to go  
5 to the bank for anything further regarding that  
6 particular entity.

7           None of the other entities would be relevant,  
8 your Honor. I mean, these are -- this is -- it's  
9 asking for financial information regarding individuals,  
10 regarding Linda Stanwood, John Fleming, Mr. Dziubla,  
11 the regional center, all of the -- all of the other  
12 entities other than EB5 Impact Advisors to which there  
13 is an allegation that the monies were misappropriated.  
14 All the monies that were given to Las Vegas Development  
15 Fund were by way of payments that were made after the  
16 completion of it obtaining investor funds and releasing  
17 those funds to Front Sight.

18           What came back are very similar to points.  
19 They -- Front Sight paid a premium to LVD Fund for them  
20 procuring the loan. Front Sight had no right to know  
21 where that money went, what was done with it. That's  
22 the business of LVD Fund as the lender. The interest  
23 that was paid by Front Sight, clearly it has no right  
24 to know where that money went, what it was used for.

25           So as to everybody else, other than Impact

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1 Advisors, this would be completely inappropriate  
2 financial information, private information that is not  
3 appropriate to compel the production of prior to there  
4 being a judgment being entered and their finances and  
5 their banking information being relevant. That  
6 actually holds true for every other bank, including  
7 Wells Fargo, as to all of the named defendants other  
8 than Impact Advisors.

9           That's really -- your Honor, we cite the  
10 authority, just because somebody is a party doesn't  
11 mean you have the obligation to open up their bank  
12 account statements and their financial information.  
13 And law is very clear on that. So I don't really have  
14 much to add other than that. I mean, it's pretty clear  
15 law.

16           THE COURT: Thank you, sir.

17           MR. ALDRICH: All right. The bank, the  
18 request for documents to the banks are a little bit  
19 different, depending on what the account was being used  
20 for. So I notice, you know, Signature Bank. Number  
21 one on the request, the Signature Bank it asks:

22           "Please provide any and all bank statements  
23 and other documents for NES Financial's escrow  
24 account for Las Vegas Development Fund, LLC,  
25 account number," and it gives a number, "for

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1 the time period beginning March 2012 to the  
2 present date."

3 So this is -- this will go some to -- I would  
4 expect that they would complain that this is going to  
5 have some proprietary information or something like  
6 that in it, which goes to the resolution we already  
7 talked about, but --

8 MR. GREER: I'm sorry.

9 MR. ALDRICH: -- the significant thing here is  
10 that over a period of time, Mr. Dziubla was making  
11 representations to my client about how many investors  
12 he has; money in the bank.

13 And that is particularly relevant to the fraud  
14 claims. It's also particularly relevant to the May 12,  
15 2016, email and then the representations Mr. Dziubla  
16 made to Dr. Piazza thereafter, as Dr. Piazza testified  
17 last time, when he was here -- when we were here.  
18 And --

19 THE COURT: Now, Mr. Aldrich, I understand  
20 that. But isn't there -- aren't there other ways you  
21 can find out that information without subpoenaing the  
22 bank records?

23 MR. ALDRICH: No.

24 THE COURT: Why is that?

25 MR. ALDRICH: They're not providing them to

1 us. We've asked for them. That's the subject I  
2 mentioned in the motion to compel, whether the  
3 defendant entities or people would have to provide  
4 them. But, no, there's not another way to get this  
5 information.

6 And like I said, the defendants are not  
7 providing it. They're not providing anything like  
8 this. They've objected to every request related to  
9 this, just as they did to the subpoena.

10 THE COURT: Well, it would be -- it's a  
11 different animal. The reason why I am focusing on the  
12 financials, I understand what your position is.

13 MR. ALDRICH: Yeah.

14 THE COURT: I understand I ordered an  
15 accounting, and I -- I -- it's my impression you feel  
16 whatever was produced was very much deficient.

17 MR. ALDRICH: That is correct.

18 THE COURT: Okay. I get that. All right.

19 Well, in certain respects, you have factual  
20 allegations that they were underfunded or whatever and  
21 had no experience --

22 MR. ALDRICH: Correct.

23 THE COURT: -- and you make that allegation.

24 Aren't they going to have to come forward with some  
25 evidence to show that they had that experience if they

1 don't come forward with it?

2 MR. ALDRICH: Well --

3 THE COURT: Maybe you win on that issue? I  
4 don't know.

5 MR. ALDRICH: Well, I will win on that issue  
6 because Mr. Dziubla already admitted he didn't have any  
7 experience. But the issue --

8 THE COURT: Or the finances.

9 MR. ALDRICH: -- the issue here --

10 THE COURT: The finances.

11 MR. ALDRICH: -- on the finances is -- there's  
12 several issues here. Okay?

13 Remember, we got defendants, Las Vegas  
14 Development Fund, whose CEO and founder is Mr. Dziubla.  
15 EB5 IC, which is the regional center, which Mr. Dziubla  
16 is an owner of that. We've got EB5 IA, which is the  
17 marketing entity, Mr. Dziubla is the person in charge  
18 of that. That's the entity that he destroyed the  
19 records for, and I'm not happy about the accounting.

20 We've got Fleming. Mr. Fleming, who is --

21 THE COURT: But think about what you're  
22 saying. You're saying he destroyed the records for and  
23 you're not happy with the accounting. Ultimately,  
24 doesn't that have some sort of impact on an evidentiary  
25 perspective?

1 MR. ALDRICH: Yes. And I filed that motion.  
2 But this is -- so this -- this -- right now talking  
3 about Signature Bank.

4 THE COURT: Right.

5 MR. ALDRICH: Okay. This relates specifically  
6 to the representations that Mr. Dziubla made as to how  
7 many investors he had at any given time.

8 THE COURT: Right.

9 MR. ALDRICH: And the Court hopefully will  
10 recall when Dr. Piazza testified last time, we talked  
11 about that meeting that occurred shortly after the  
12 May 12, 2016, email and he testified that Mr. Dziubla  
13 came in and said, We have to change the capital stack.  
14 We have to take out the minimum raise. But I've got  
15 these guys lined up and I have X number of people, and  
16 I don't remember the number right now, lined up ready  
17 to go as soon as we do this. And then he did.

18 As to Signature Bank, and this first request  
19 that I have, it's absolutely relevant to that.

20 The rest of the requests really relate mostly  
21 to the other entities and whether they also had  
22 accounts in those banks. We're trying to track down  
23 where the 500,000 and change from my client went.

24 I don't know that there's going to be any  
25 other information related to these other requests, but



1 every one of them relates to a party to this  
2 litigation -- right -- or NES is the escrow agent.

3           And I recognize that there are concerns about  
4 whether that might reveal the identity of the investors  
5 or something like that. I will abide by the protocol  
6 that the Court has already addressed. And we can do  
7 that with those documents as well. But this is  
8 relevant and discoverable stuff.

9           With regard to Open Bank, and the request  
10 there, we're asking for similar things. We have an  
11 exact account number. And -- but Open Bank is --  
12 EB5 IA used that account. And then we want to know if  
13 there were transfers to any other parties in the case.

14           Now, Wells Fargo probably, admittedly, is my  
15 most difficult one because Mr. Dziubla is telling us  
16 that he's provided all those records, but there's not  
17 harm in me subpoenaing them from Wells Fargo. It  
18 doesn't hurt anybody. And then I get to verify that  
19 I've got everything. But I will admit that's the  
20 toughest one for me because I already have some  
21 documents from them.

22           But Bank of Hope is one that was used by Las  
23 Vegas Development Fund. And I've asked for specific to  
24 an account that we have information, and then same  
25 thing, I go through and ask for any accounts or

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1 transferring or whatever that happened with, related to  
2 a party to this litigation.

3           Now, there -- there really hasn't been -- with  
4 one exception that I can recall as I'm standing here,  
5 there hasn't really been an objection that -- that I'm  
6 going to even get information related to the parties in  
7 the case. There was an objection raised or a concern  
8 by Mr. Dziubla that perhaps one of these subpoenas  
9 would result in us receiving information related to an  
10 account his son is also on.

11           Again, on the one hand I certainly see why he  
12 wouldn't want that to happen. On the other hand we  
13 want to know where the money came from or if there was  
14 any money from my clients. So if we need to do --  
15 follow that same protocol, we're willing to do that.

16           But even the Wells Fargo documents that we  
17 received, there's a whole bunch, tens of thousands of  
18 dollars that to unknown vendors we can't even tell  
19 where it went, on the stuff we've already gotten.

20           And so I'm certainly hopeful that I might get  
21 a little more information asking from Wells Fargo, but  
22 they're all relevant and discoverable, and we'll abide  
23 by whatever protective order the Court imposes related  
24 to that information.

25           THE COURT: This is -- these are my thoughts.

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1 And I think it's important to distinguish this case  
2 from a typical business court case in this regard.

3           Normally, what we would see, we would have a  
4 scenario where you have, maybe, a receivership or  
5 there's allegations of misuse of corporate assets or  
6 assets of LLC or partnership and the like. And you  
7 have business bank accounts for the corporation or the  
8 LLC, and you start subpoenaing documents of that  
9 business organization to find out where monies have  
10 gone and the like.

11           To me that appears to be a different animal  
12 here because you have a breach of contract, allegations  
13 of fraud in the inducement and so on. And so -- and  
14 it's different in this regard, because clearly,  
15 Mr. Aldrich, you have your burden of proof on certain  
16 issues. Just as important, you have to remember when  
17 it comes to certain forms of defenses, you just can't  
18 say you got a burden of proof there too.

19           And so I think it's slightly -- it's a  
20 slightly different animal because these are the  
21 separate accounts of the defendant in this case; right?  
22 And so it's kind of like a different analysis. And I'm  
23 just wondering from a traditional perspective because,  
24 for example, I think one of the cases that was cited by  
25 the defendants in this case was Schlatter v. Eighth

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1 Judicial District Court.

2           And it's a '70s case, but it really focuses --  
3 and it's a slightly different case, and I realize it  
4 dealt with -- it was a tort case. But the key  
5 language, based upon my recollection is this: They  
6 wanted to force the plaintiff to sign medical  
7 authorizations, income tax authorizations and the like.  
8 And the Nevada Supreme Court said, Wait a second here.

9           And it's kind of analogous to what we have  
10 going on here. You just can't go on a fishing  
11 expedition; right? That was the language that was  
12 used.

13           But my point is this: Can't you just straight  
14 up ask for stuff; right? And then ask for documents,  
15 and really specifically what you want, limited in time  
16 and location, and request them to produce it. If they  
17 don't produce it, that's a problem. Right?

18           MR. ALDRICH: Yes, I can. Yes, I did.

19           THE COURT: That's --

20           MR. ALDRICH: That's the motion to compel  
21 that's out there.

22           THE COURT: Okay.

23           MR. ALDRICH: But the Court will recall, the  
24 reason -- part of why this went out is because -- I  
25 mean, it's the same objection. The same objection to

1 my request for production to them as they're making  
2 here today. Okay. And the Court will recall that we  
3 had a hearing in July that they came in, asked for  
4 special master, and the Court, instead of appointing a  
5 special master, said, I'm going to impose a 14-day  
6 deadline on a request for production for documents.

7 THE COURT: Right.

8 MR. ALDRICH: So I had it ready to go. I  
9 dropped, I don't remember, between 550 and 600 over the  
10 six parties. I was serious.

11 THE COURT: I understand.

12 MR. ALDRICH: Okay. And -- and in those  
13 answers, I got a whole bunch of repetitive objections.  
14 I talked about the repetitive objections in my  
15 motion --

16 THE COURT: Right.

17 MR. ALDRICH: -- or opposition. But I got a  
18 whole bunch of those. Not one document got identified,  
19 not one got identified to even one response.

20 Okay. No justification of a privilege  
21 objection, proprietary objection. No citation, no  
22 case, nothing. Okay.

23 So what did I do? I subpoenaed it from a  
24 third party. Why? Because it's relevant for us. It's  
25 relevant to the fraud claims. It's relevant to the

1 fact that my client paid 520-ish thousand dollars to --  
2 to try to move forward on this based on the  
3 representations that were provided.

4           So can I ask for it in a request for  
5 production? Absolutely. And I did.

6           And it's the same objection. They're going to  
7 say the same thing when we come here in two weeks as  
8 they're saying today.

9           MR. GREER: If we had a request for something  
10 specifically, we could do it. When you get 600 of all  
11 documents to support anything that you disagree with in  
12 paragraph 12 of the complaint, all documents that  
13 support anything you disagree with in paragraph 13, I  
14 mean, times 600 or whatever, we -- we get, like, 40  
15 requests, and we thought about it. We focused on it.  
16 We asked for it. And that's how you get a response,  
17 your Honor, I think.

18           I think he's being unfair here by, saying I  
19 asked for a million things and I didn't get anything.  
20 That's because it's lost in the message.

21           The Court said 14 days, and that was to speed  
22 things up and make it easier. And I think that put a  
23 burden on counsel to use that judiciously and really  
24 focus, rather than say, Hey, here's 600 things, respond  
25 in 14 days. What are you going to do?

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1 MR. ALDRICH: Ninety days ago. That was 90  
2 days ago.

3 MR. GREER: But we did -- but in response we  
4 are producing everything we have. He's getting  
5 documents.

6 MR. ALDRICH: They did provide --

7 THE COURT REPORTER: I need one at a time.

8 THE COURT: One at a time.

9 MR. ALDRICH: They provided a supplement to  
10 initial disclosures, six-ish thousand pages.

11 MR. GREER: 6,000 pages.

12 MR. ALDRICH: Okay. I -- they sent a request  
13 asking for the attachments to the emails because they  
14 were not attached, and they're confusing, but that's --

15 MR. GREER: We fixed that --

16 THE COURT REPORTER: I need one at a time.

17 THE COURT: One at a time.

18 MR. ALDRICH: They did provide a supplement to  
19 16.1 disclosures.

20 MR. GREER: And we took that last request and  
21 we paired up the attachments with the emails and have  
22 that for you.

23 MR. ALDRICH: It's coming?

24 MR. GREER: I think I was probably supposed to  
25 bring them today.

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1 MR. ALDRICH: Okay.

2 MR. GREER: But it's -- because it's too big  
3 for email.

4 But, yes, it's done and we agreed to produce  
5 it in writing. Our response, we agreed.

6 MR. ALDRICH: That's true.

7 MR. GREER: We'll work with them, your Honor.  
8 We all need to get to the same point at trial here. I  
9 just think we all need -- it's better if we focus,  
10 really rather than throwing those broad nets everywhere  
11 which cause distractions.

12 THE COURT: Is that what's set for the 23rd,  
13 the motion to compel and for sanctions?

14 MR. ALDRICH: Yes.

15 THE COURT: And with the documents that have  
16 been produced, does that satisfy some of the issues you  
17 pointed out in your motion to compel, or do you know at  
18 this point?

19 MR. ALDRICH: No. The documents that were  
20 produced were mostly emails and some of the  
21 transactional documents. Very little that I didn't  
22 already have.

23 THE COURT: Okay.

24 MR. GREER: Which makes sense because both  
25 parties had the transactional documents and the emails



1 between each other. There should be very little that  
2 either side has the other doesn't.

3 THE COURT: Mr. Aldrich, do you remember --  
4 and I don't expect you to have an infallible  
5 computer-like recollection of specifically what was  
6 requested, but do you remember in a general sense, for  
7 example, what was requested from any documents in  
8 possession of the defendant as it relates to the  
9 Signature Bank?

10 MR. GREER: I don't think we got that. We got  
11 it in the subpoena, not in the discovery. They're very  
12 general discovery demands. Nothing specific really.

13 MR. ALDRICH: I cannot make that  
14 representation because I don't remember. I will  
15 certainly look. I mean, with that 14-day order, I  
16 guess, I can send new requests.

17 THE COURT: Let me look here.

18 MR. ALDRICH: The large majority of the  
19 requests were contention interrogatories related to the  
20 paragraphs of the complaint.

21 MR. GREER: Excuse me, your Honor. I just had  
22 notes after Mr. Aldrich's presentation. He made the  
23 comment they wanted to know where the money went. I  
24 think that's exactly what case law says is  
25 inappropriate here.

1 With regard to EB5 Impact Advisors, we gave  
2 them everything showing where the money went, including  
3 the bank statements. Regarding what the lender does  
4 with the interest money, what the lender does with his  
5 progress payments, with his incentive bonuses, they  
6 have no right to that.

7 That's like, you know, the mortgagee  
8 subpoenaing the bank saying where did you spend my  
9 points I paid on the loan and where did you spend the  
10 interest I paid on the loan.

11 Certainly not the personal banking  
12 information, everybody who's named as a defendant in  
13 this case.

14 MR. ALDRICH: And we believe we do because it  
15 was money targeted for a specific purpose.

16 MR. GREER: So we're going to be able to get  
17 Piazza's banking statements and Mrs. Piazza's banking  
18 statements because LVD Fund gave Front Sight money we  
19 want to know where it went? That is Mr. Aldrich is  
20 going to stipulate to that being relevant and become  
21 the law of the case, is that the proposed stipulation?

22 MR. ALDRICH: No. But I can look at what you  
23 asked for from Jennifer Piazza.

24 THE COURT: Gentlemen, we're not going to go  
25 into -- and ladies, of course -- we're not going to go

1 there today.

2           You know what I'm going to do? And this is  
3 what I think you really need, and I'm not going to  
4 preclude any party from conducting meaningful  
5 discovery, but my concern is we can't go overbroad and  
6 just start subpoenaing bank accounts.

7           And that's why I think when I sat back and  
8 reflected, I made a distinction that these were common  
9 books and records, and you had to fight between  
10 shareholders of a corporation. Absolutely; right? And  
11 typically that's the type of -- that type of scenario,  
12 you have a business court where you might have partners  
13 fighting over things they want to know where the money  
14 went.

15           This is a different issue because we had -- we  
16 have different issues and entities that are litigating  
17 this case. There's allegations of fraud, fraud in the  
18 inducement. There's allegations of breach of contract,  
19 breach of covenant of good faith and fair dealing. I  
20 think that's a different scenario. I just don't think  
21 that gives you the right to start looking at all bank  
22 accounts. I just don't.

23           I do think that you have -- if something  
24 specifically tailored to a specific claim for relief,  
25 you can ask for that information, but it should be more

1 laser like and focused than just a broad, Hey,  
2 Signature Bank, I want all the stuff. Right? Because  
3 I don't think that's proper. I really don't. There's  
4 privacy issues there. There's issues as to whether  
5 it's relevant or not, and that's kind of how I see  
6 that.

7 Now, if we have any other comments you want to  
8 make on this specific issue, but I think I'm ready to  
9 rule. Anything else?

10 MR. ALDRICH: No, your Honor.

11 THE COURT: Okay. This is what I'm going to  
12 do. As far as the banking records are concerned, two  
13 things: First and foremost, regarding defendant's  
14 motion to quash subpoenas for deposition and/or  
15 documents to Open Bank, I guess we can include Bank of  
16 Hope, Signature Bank, and, I guess, there's probably  
17 one more at Wells Fargo, I'm granting that.

18 Mr. Aldrich, I want to make sure I'm perfectly  
19 clear on this. I'm not saying that potentially that  
20 information, you can't seek certain financials. I'm  
21 not saying that. I'm just quashing the subpoenas.

22 If you want to have a specific laser-like  
23 request for production of documents as it pertains to  
24 specific financials that you feel are important as it  
25 relates to your claims for relief, you can do it, sir.

1 And if they don't produce it, come in, we deal with it.

2           You see what I mean?

3           MR. ALDRICH: I understand, so it's granted  
4 today without prejudice. Something in the future if I  
5 can --

6           THE COURT: Yeah.

7           MR. ALDRICH: -- hone it in.

8           THE COURT: No impact on a request for  
9 production of documents, because I just -- I just feel  
10 that it would be -- it's just opening up Pandora's Box.  
11 I really and truly do.

12           Because, yes, you might have a right to -- if  
13 they're taking a position that, for example, monies are  
14 being spent for all these things and you feel, you know  
15 what, Judge, they mislead my client, they didn't do  
16 that -- I'm just being very general in nature -- you  
17 have a right to focus in on that.

18           I think potentially that might be relevant,  
19 and even if it wasn't relevant for the purposes of  
20 admissibility at trial, it might be relevant for the  
21 purposes of discovery. But I think it's better to  
22 approach it from that regard.

23           And that's one of the reasons, too, I don't  
24 want unnecessary delay. That's why I put a shortened  
25 time period on the responses to the request for

1 production of documents, not so this case won't get  
2 bogged down, right?

3 MR. GREER: Yes, your Honor.

4 THE COURT: So is there more?

5 MR. GREER: One more.

6 MS. HOLBERT: One more.

7 THE COURT: So we're actually getting  
8 something done.

9 MS. HOLBERT: Yes, we are.

10 THE COURT: Ms. Holbert, it doesn't always  
11 seem that way to me.

12 MS. HOLBERT: Right. We're making progress.  
13 We're doing good today.

14 THE COURT: Right.

15 MS. HOLBERT: The last one is for the  
16 defendant Sean Flynn.

17 (Brief pause in proceedings.)

18 MR. GREER: We're working it out here, your  
19 Honor.

20 THE COURT: I've been very patient. That's  
21 what I just told my clerk. I said, Maybe they're  
22 working it out.

23 MS. HOLBERT: Right.

24 (Brief pause in proceedings.)

25 MR. GREER: Okay. So, your Honor.

1 THE COURT: Yes, sir.

2 MR. GREER: To the last one with Sean Flynn,  
3 we've agreed to a compromise without prejudice to  
4 plaintiff's right to bring the motion in its entirety  
5 again or as to specific issues raised. But as to Sean  
6 Flynn, as to Items 3 and 4, we're going to fully  
7 comply.

8 That has to do with the documents regarding  
9 the economic study that he performed for EB5 impact at  
10 the regional center, No. 3; No. 4, documents relating  
11 to his receipt of the equity in the company in lieu of  
12 \$20,000 payment for doing the economic study in their  
13 entirety.

14 As to 1 and 2, we're going to produce  
15 documents to Mr. Aldrich as requested with the names  
16 of -- sensitive names of any investors or brokers and  
17 identifying information redacted.

18 And if there any communications which are not  
19 being produced for any reason, I will be discussing  
20 them with Mr. Aldrich and we will give him the  
21 opportunity to seek further intervention from the  
22 Court.

23 MR. ALDRICH: Nevada law [indiscernible] --

24 THE COURT REPORTER: I didn't get what you  
25 said.

1 MR. GREER: Nevada law. Anything that's not  
2 been provided, we'll provide a log with the general  
3 subject matter and identifying information of the date  
4 of the parties, and then the reason for the -- not  
5 producing them.

6 THE COURT: So, in essence, that would be akin  
7 to a privilege log, is that it?

8 MR. ALDRICH: Yes, it would be a privilege  
9 log.

10 THE COURT: Which is appropriate. No  
11 question.

12 So has that been resolved for now?

13 MR. ALDRICH: Yes, it has.

14 MR. GREER: Now, we have your motion to quash  
15 our subpoenas to Morales Construction.

16 MR. ALDRICH: We're almost there, your Honor.

17 THE COURT: Is this plaintiff's motion to  
18 quash subpoenas of third parties?

19 MR. ALDRICH: Yes.

20 So defendants issued three subpoenas or  
21 notices of intent to issue three subpoenas to Morales  
22 Construction, Top Rank and All American.

23 The gist of our objection -- I mean, we've  
24 kind of laid it out in the motion. But we had a big  
25 discussion a few minutes ago about the breadth of my



1 requests. I had four to seven requests.

2           These requests are essentially identical.  
3 There's some typo as to some numbering, which is a  
4 little bit confusing, but there's around 31 or 32  
5 requests to each of these entities.

6           And I think the main issue here is that  
7 they're not -- nothing here is relevant. I mean, we  
8 have had some discussion about Morales Construction and  
9 this senior debt and whether they're -- they got senior  
10 debt and, you know, the contracts require them to use  
11 best efforts to get senior debt.

12           But when we look at these requests -- I'll  
13 just kind of walk through. I'm going to walk through  
14 the -- it's my Exhibit A to the motion. I'm sorry,  
15 Exhibit 1 to the motion. And it's the one to Top Rank.

16           My understanding is that this construction  
17 line of credit with Morales, I don't have an  
18 understanding, and I don't think one has articulated as  
19 to why Top Rank and All American are here, are being  
20 subpoenaed. But the first request to All American --  
21 I'm sorry, Top Rank is the one I'm looking at.

22           The first request to Top Rank is:

23           "All documents you used or relied on in  
24 entering into the construction line of credit."

25           I don't believe that's this entity, which

1 automatically makes them all nonrelevant.

2           And then the next one is:

3           "Any communications that relate or refer to  
4           the construction line of credit."

5           Again not relevant to any of the issues here.

6           And it goes on. I really -- I mean, I could  
7 walk through each one, and I will if the Court wants me  
8 to. But if the Court looks at these, they are facially  
9 overbroad and frankly not relevant at all. And they  
10 don't serve any need or purpose in the case. And  
11 that's the gist of our objection.

12           These are entities that Front Sight still  
13 works with. We think it's really just to harass them  
14 or make Front Sight look bad, or try to make Front  
15 Sight look bad.

16           Some of these are duplicates, too, by the way.  
17 Numbers 19 and 20 are duplicative of 7 and 8. Anyway,  
18 this goes through like that. But they're just overly  
19 broad and not relevant. That's the gist of our  
20 objection, your Honor.

21           THE COURT: Okay. Thank you.

22           MR. GREER: Your Honor, these three entities  
23 are each identified as parties to the construction line  
24 of credit, so that's where we sent requests out to each  
25 of the three.

1           The issues that we have with regard to line of  
2 credit is, one, is it real? Is it a sham?

3           Two, what money, what has been done on the  
4 property? LVD Fund, Mr. Dziubla have reporting  
5 requirements which are coming up from its EB5  
6 investors. They need to know how much work was done on  
7 the project.

8           The breach of the contract of the construction  
9 loan agreements, Front Sight has not provided that  
10 information. So, I mean, granted we had -- we have  
11 roughly 30 requests on these. They are each very, very  
12 specific and designed to address specific issues that  
13 are relevant in this case.

14           Documents that you used to rely on in entering  
15 into the construction line of credit, this goes to  
16 whether or not this is a sham agreement or actually a  
17 bona fide line of credit. The construction loan  
18 agreement required Front Sight to get senior -- a  
19 senior lender. So we allege that that's not the case,  
20 that this is a sham. It's not a senior lender, and  
21 that is a breach of the contract. So we need to have  
22 evidence to show whether it's a sham or not.

23           So did Front Sight do an application? Did  
24 they give their financial information like they would  
25 to a lender? Did they provide any type of security to

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1 the lender? That's the type of thing that the lenders  
2 would rely upon that we have asked here, clearly  
3 relevant.

4           Communications that relate to the -- between  
5 Front Sight and each of the three companies regarding  
6 the construction line of credit is directly relevant to  
7 both issues. Documents have been given to you from  
8 Front Sight relating to the construction line of  
9 credit. Obviously directly on point.

10           We then go into documents asking for monies  
11 that have been spent, clearly directly on point.  
12 Documents reflecting construction on the project, very  
13 relevant and very, very important for the EB5  
14 reporting.

15           Remember, Front Sight has not given their bank  
16 statements on any of their prior productions. They  
17 have now missed their most recent required production  
18 of EB5 documentations. They didn't give anything. So  
19 now we're trying to figure, okay, where can we go to  
20 get that information. Clearly here, the Morales and  
21 this group are the companies that allegedly did the  
22 work on the project. They got paid for the work on the  
23 project. We just need to know what work was done and  
24 what they were paid for. And every single one of these  
25 questions goes directly to that.

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1           We asked about construction schedules,  
2 construction plans, if they have any. That's something  
3 there under the construction loan agreement that LVD  
4 Fund has a right to. Any of the books and records of  
5 Front Sight that it has reviewed, that's something that  
6 the construction loan agreement, we have a right to.  
7 Any photographs or video recording of the project to  
8 see what has been done, that's something that we have a  
9 right to.

10           There's nothing privileged in here.  
11 Everything we've asked is directly related to Front  
12 Sight's application for this line of credit, the basis  
13 for them granting it. And lastly, in the end, their  
14 ability to actually service this large a line of  
15 credit, the last handful of questions, ask each of  
16 these individual companies what portion of that  
17 \$36 million line of credit are you responsible for.  
18 And then to provide the documentation to show that you  
19 are capable of servicing or carrying that portion of  
20 that debt. That goes right to whether this is a sham  
21 or not.

22           I'll be very, very careful here to make sure  
23 that everything is relevant and carefully tailored.  
24 Your Honor, I think we did so. And it's just -- and we  
25 need these to proceed with the case.

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1           From what we can gather, this is the only  
2 company -- these are the only companies that have done  
3 work on the property that have been able to figure out.  
4 So this is the universe of, you know, the work that's  
5 been, and we're going to have, and it's got to be  
6 reported to the immigration service before the end of  
7 the year.

8           Thank you. Good point.

9           Yeah, these were included in our request for  
10 production --

11           THE COURT: I did see that.

12           MR. GREER: Okay.

13           THE COURT: There was a request for production  
14 of documents specifically --

15           MS. HOLBERT: Right.

16           THE COURT: -- dealing with a lot of these  
17 issues.

18           MR. GREER: I did attempt an alternative  
19 method, yes.

20           All right. Thank you.

21           MR. ALDRICH: I haven't received any objection  
22 to my responses for request for production. Point that  
23 out.

24           But a couple of things. First of all,  
25 Mr. Greer said that Front Sight is required to get

1 senior debt. They're not required to get senior debt;  
2 they're required to use best efforts to obtain senior  
3 debt.

4           And, by the way, Dr. Piazza testified about  
5 this when he was here last time, and he talked about  
6 the fact that as he was entering into this agreement  
7 with Morales, that he was communicating with  
8 Mr. Dziubla about it the entire time.

9           There was -- Mr. Greer just mentioned that  
10 Front Sight has not given documents, and there is some  
11 most recent reporting or something that was due. I  
12 don't know what that is. I know that they brought your  
13 Honor another thing they filed this morning called  
14 notice of further monetary default. It says nothing  
15 about not providing information.

16           I know that we provided -- Front Sight has  
17 provided thousands and thousands of pages of documents.  
18 And so -- at any rate, this is all -- they're asking  
19 for information that they can get elsewhere. Although  
20 I will admit, it may be me that it would come from, you  
21 know.

22           MR. GREER: We asked.

23           MR. ALDRICH: But like I said, I hadn't got  
24 any objection to the response that we prepared. So,  
25 anyway, that's -- I think I've said my piece. I don't

1 have anything else to add.

2 THE COURT: So you're saying that it's  
3 premature, is that it? I'm trying to figure out what  
4 your position is, Mr. Aldrich. Because I'm looking at  
5 it -- I think this is on page 13 of the subpoena duces  
6 tecum. The Top Rank Builders, for example. And  
7 Request No. 1 would be:

8 "All documents that you used or relied upon  
9 in entering into a construction loan line of  
10 credit."

11 Is there anything specifically wrong with  
12 that?

13 MR. ALDRICH: (No audible response.)

14 THE COURT: Because I understand you said --  
15 earlier you said, Look, Judge, we're just required to  
16 make our best efforts to get one.

17 MR. ALDRICH: Yeah.

18 THE COURT: But it's my understanding, you  
19 used your best efforts and there was -- your client  
20 obtained a line of credit.

21 MR. ALDRICH: Through Morales.

22 THE COURT: Right.

23 MR. ALDRICH: Yeah. And the consent of  
24 Mr. Dziubla.

25 But, your Honor, doesn't that, right,



1 automatically -- first of all, it's best efforts.  
2 Okay. And then they did it. But the fact that it's  
3 best efforts makes all of it not relevant in the first  
4 place.

5 MR. GREER: If it's best efforts to get a  
6 senior, obtain a senior loan, then they said they got a  
7 senior loan, but it becomes real relevant when it's  
8 fraud. And it's not a senior loan, it's a sham.

9 Best efforts don't include getting something  
10 and faking like it is a valid senior loan.

11 MR. ALDRICH: Huh.

12 MR. GREER: They said they got it. We need to  
13 know whether they really did or whether using their  
14 best efforts they put together a sham to avoid having  
15 to use their best efforts.

16 MR. ALDRICH: There wasn't a sham. Dr. Piazza  
17 has already testified about it. He took the stand last  
18 time and talked about it.

19 MR. GREER: I think he said it was a sham.

20 MR. ALDRICH: No, he didn't.

21 THE COURT: Well, ultimately, that might be a  
22 factual determination for someone else to make, so I  
23 won't call it one way or another, but I do think they  
24 have a right, just like we talked about before, if your  
25 client is taking the position that they did obtain a --

1 was it a \$36 million line of credit, then okay. That's  
2 fine. But what documents support that, right? What  
3 happened? How was it obtained?

4 MR. GREER: And why did they use it if it's  
5 real? I mean, that's what caused all the suspicion.

6 MR. ALDRICH: Dr. Piazza already talked about  
7 that. He talked about it when he was here.

8 MR. GREER: That's --

9 THE COURT: But here's the thing. And I'm not  
10 saying you're wrong, Mr. Aldrich, but clients can talk  
11 about a lot of things, but you need -- is there  
12 evidence to support their position? And that's really  
13 all -- all they're doing is they're just testing his  
14 testimony.

15 And hypothetically, if, for example -- and I  
16 don't know how this works under the new circumstances.  
17 But if he added a line of credit, who issued it? How  
18 was it funded? How is there access? And I'm just  
19 talking in a very general nature.

20 For example, if you go to every Bank of  
21 America and get a HELOC loan, it gets you a line of  
22 credit on the house, there is documents you submit to  
23 the bank, and they look at it. They approve it. And  
24 they issue a line of credit to you, and -- and you can  
25 access that typically at your own discretion, right?

1 Based upon the line of credit that was issued.

2           Now, I don't know how much this differs from  
3 that scenario, but that's typically how lines of credit  
4 work. You're given a certain sum out there, whether  
5 it's \$500 or whether it's \$50 million, depending on  
6 your financials that you can access that. And I think  
7 that's all they're asking for.

8           That's from what I can tell; right? So what's  
9 wrong with that? That's my ultimate question.

10           MR. ALDRICH: I understand. Like I said, I've  
11 said my piece. I don't have anything to add to what  
12 I've already talked about.

13           THE COURT: Okay.

14           You get the last word, sir. No, you don't.  
15 It's Mr. Aldrich gets the last word.

16           Okay. And for the record, there was a request  
17 for production that wasn't responded to, so you're  
18 saying the subpoena the records directly from --

19           MS. HOLBERT: Still --

20           MR. ALDRICH: I know there hasn't been any  
21 discussion or anything about my responses. None.

22           MR. GREER: Your Honor, it's -- if we asked  
23 for it and they say, We're not going to give it,  
24 nothing says, Okay, I got to tie this up in court for  
25 three months on a motion to compel and what not. You

1 know what, we asked them nicely. They said they  
2 weren't going to give them, so we go right to the  
3 source. We don't know if we can trust them. To be  
4 disparaging here. Going to the source is the safer way  
5 to go anyway, and so we did try to get it directly.  
6 They said no. We decided to go to the source.

7 MR. ALDRICH: I actually don't remember what I  
8 said to that one. I don't know if it was because there  
9 was 14 days and I didn't have time to get it. But,  
10 again, no one has mentioned anything to me about  
11 anything wrong with my responses. But I remind the  
12 Court, I did. I wrote a 13-page single space letter to  
13 opposing counsel explaining the problems with their  
14 responses. And then repeatedly was told I was going to  
15 get supplemental responses, and I didn't get them, so I  
16 filed a motion to compel. But I get where we are. I  
17 understand --

18 THE COURT: Well, you filed a motion to  
19 quash --

20 THE COURT REPORTER: I need one at a time.

21 MR. ALDRICH: No, I filed a motion to compel.  
22 That's on the 23rd. Related to this -- I'm talking  
23 about related to the response.

24 MR. GREER: Your Honor, I probably missed the  
25 call when Mr. Aldrich called me and said, Hey, Keith,

1 you know what, you got that motion filed. I'll go and  
2 give them to you. Let's work it out here.

3 I didn't get that. I got an opposition back,  
4 so ...

5 MR. ALDRICH: That is true.

6 THE COURT: All right. I mean, I do think  
7 they have a right to that information at the end of the  
8 day. I don't want to side step the processes.

9 So is there anything else I need to know? I  
10 mean --

11 MR. ALDRICH: I have nothing to add, your  
12 Honor.

13 THE COURT: I mean, am I somehow prejudicing  
14 your client by making this determination without going  
15 through the process? I just want to make sure I'm not  
16 rushing to judgment here. That's all.

17 There is nothing else, Mr. Aldrich?

18 MR. GREER: No, your Honor.

19 MR. ALDRICH: No, your Honor. I stated our  
20 position.

21 THE COURT: Okay. Well, for the record we're  
22 talking about plaintiff's motion to quash subpoenas of  
23 third parties, right?

24 MR. GREER: That's it.

25 MR. ALDRICH: That's correct.

1 MS. HOLBERT: Yes.

2 THE COURT: This is what I'm going to do  
3 regarding the motion to quash, I'm going to deny it.

4 MR. ALDRICH: No limitation at all on those  
5 requests?

6 THE COURT: I'm asking -- I'm trying to get  
7 you to qualify --

8 MR. GREER: Limited to the dates.

9 THE COURT: You said no, you're limited.

10 MR. GREER: I limited each one to the dates,  
11 to the subject, to the type.

12 MR. ALDRICH: Okay.

13 THE COURT: That's why, Mr. Aldrich, I was  
14 wanting to make sure I understood your position, and  
15 you said -- I just -- is there something I'm missing?  
16 I need to dig in a little deeper.

17 MR. ALDRICH: I mean --

18 THE COURT: That's why I wanted to know --

19 MR. ALDRICH: I've said my piece. They are  
20 completely overbroad. Okay? They're repetitive and  
21 everything else, but I can -- I can go on and on. I  
22 know what the Court is going to do. I can see it. The  
23 Court has indicated, and I don't want to waste the  
24 Court's time.

25 THE COURT: Well, it's not necessarily -- I

1 don't -- whatever time is necessary to make sure the  
2 request is proper, I don't think I've rushed you out of  
3 here. I probably should have done so on many  
4 occasions, but I haven't, Mr. Aldrich.

5 MR. ALDRICH: I'm not saying you have, your  
6 Honor. Absolutely not.

7 THE COURT: But if there's a concern with the  
8 request, just like we dealt with some of the prior  
9 requests, I'm willing to listen. I realize it's late  
10 in the day, but I'm not ever going to just rush to  
11 judgment. If there's a concern you have, let me know  
12 with a little bit of particularity so I can address it.  
13 But I do think they have -- for example, they have a  
14 right, just like we talked about before, and your  
15 client has a right to test certain aspects of their  
16 case, they have a right to test whether or not there's  
17 a valid construction loan agreement.

18 And, for example, I mean, I look at it and  
19 they do appear to be unlike, say hypothetically, just  
20 bank statements, but, for example, Request No. 1:

21 "All documents you relied upon in entering  
22 into the construction loan" -- I'm sorry,  
23 "construction line of credit."

24 Right? That's pretty specific. That's not  
25 asking for anything else, but anything that they were

1 given that they relied upon before they issued this  
2 "construction line of credit." That is all. Nothing  
3 more; nothing less.

4 Request No. 2:

5 "All communications between and among you,  
6 Front Sight, that relate or refer to the  
7 construction line of credit."

8 And it just seems to me, all documents -- I  
9 mean, No. 3 and No. 4, they're all going to one item,  
10 and that's the construction line of credit.

11 Now I'm looking at these. Then it goes to  
12 project dates. Right? I'm just kind of going through  
13 it a little bit.

14 Construction points, if any.

15 MR. ALDRICH: Okay. No. 14. No. 14 asks for:

16 "Documents relating to or reflecting Front  
17 Sight's financial status, including without  
18 limitation, financial statements, banking  
19 records, tax returns, accounting records."

20 They already have all that.

21 MR. GREER: But that would only be to the  
22 extent they were in the lender's possession as part of  
23 the construction loan agreement, which would show if  
24 they had those things, it would tend to prove  
25 plaintiff's case that it was a legitimate process. If

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1 they don't have any of those, it would tend to, I  
2 think, support defendant's position that it was not a  
3 legitimate process.

4 THE COURT: Well, for example, No. 14  
5 potentially could be tweaked to reflect No. 15. And  
6 what I mean by that is this. No. 14 says:

7 "All documents referring to, related to, or  
8 reflecting Front Sight's financial status,  
9 including without limitations, financial  
10 statements, banking records, tax returns, and  
11 accounting rules."

12 But No. 15 -- and this is a very cursory  
13 review by me on the bench. No. 15 says:

14 "All documents that refer or relate to any  
15 of the Front Sight -- Front Sight's books and  
16 records you have reviewed."

17 MR. GREER: Yeah. The reason the two of those  
18 are distinct are, One, if they have any documents in  
19 their possession relating to that item; but, Two, if  
20 they went to Front Sight's, you know, offices and they  
21 reviewed books, they don't have copies themselves,  
22 maybe they just decided to go over and look at the  
23 books and records at Front Sight. They wouldn't keep  
24 copies, but they would say in their records, Today we  
25 reviewed, you know, whatever the progress was on the

1 project or reviewed the cash flow statements, whatever,  
2 with Mr. Piazza at his offices, or anything like that.  
3 That was just things they might not have, but they  
4 actually reviewed.

5 MR. ALDRICH: All right. So Request No. 24, I  
6 see where the Court is so I'm going to jump down a  
7 couple of those. Request No. 24:

8 "All documents reflecting communications  
9 between or among Top Rank Builders, Inc.,  
10 Morales Construction Inc., All American  
11 Concrete and Masonry, Inc., regarding the  
12 project."

13 Those are third party to third party  
14 communications.

15 No. 25:

16 "All documents reflecting contracts between  
17 Front Sight and Top Rank Builders, other than  
18 relating to the construction line of credit or  
19 project."

20 Now we're outside the construction line.

21 THE COURT: These are -- Mr. Aldrich, these  
22 are the points you needed to bring up to me. I mean,  
23 really, they are.

24 Are there more in here you want me to look at,  
25 sir?

1 MR. ALDRICH: No. 26:

2 "All documents reflecting the business  
3 relationship between Top Rank Builders,  
4 Morales, and All American."

5 Again, not relevant. Overbroad.

6 Communications with the Nye County planning  
7 department, No. 27.

8 MR. GREER: Your Honor, this is -- these  
9 are -- a lot of these are based in part on Front Sight  
10 not giving us any information about the projects. So  
11 this was designed -- if there were discussions about  
12 any pertinence or any type of research into the project  
13 involving communications with Nye County and Front  
14 Sight's construction, which is the project, that would  
15 be relevant too.

16 With regard to the communications between  
17 these three folks and what their relationship is,  
18 they're all three together on -- on the line of  
19 credits. They all three have the same president.  
20 They're all three the same office address. And so I  
21 was trying to figure out how they're related. So that  
22 was -- and actually, you know what, each of these --  
23 every one of these, excuse me, every one of these has  
24 to do with the project.

25 Communications between you three regarding the

1 project. Communications with Front Sight regarding the  
2 project. Everything in there is related to -- it's all  
3 limited by the project. It's limited by time, by scope  
4 and by subject.

5           Yeah, that's right. They were the lenders and  
6 the ones working on the project. They are the ones  
7 doing the work.

8           MR. ALDRICH: So, your Honor, I reviewed the  
9 rest, and I think I've noted everything, but 25 is not  
10 related to the project.

11           MR. GREER: It's not? I thought it was.

12           MR. ALDRICH: I'm looking at All American.  
13 There was some confusion. This one -- for the record:

14           "All documents reflecting contracts between  
15 Front Sight and Top Rank Builders, Inc., other  
16 than relating to the construction line of  
17 credit or the project."

18           So that's everything not related to the  
19 project.

20           MR. GREER: Again, this was establishing the  
21 relationship between the parties and if there was any  
22 type of quid pro quo going on on a sham line of credit.

23           THE COURT: You have a few more minutes,  
24 Mr. Aldrich. You can take your time and look at it  
25 from, like, 28 on.

1 (Brief pause in proceedings.)

2 MR. ALDRICH: The only other one, No. 32,  
3 related to communications relevant to the litigation.  
4 I don't know that that's relevant to anything. I  
5 looked at the other ones.

6 THE COURT: Okay.

7 MR. ALDRICH: And based on the Court's  
8 comments previously, I understand how the Court's going  
9 to find on those.

10 MR. GREER: And I think you'll notice the  
11 theme throughout, your Honor, is this is all caused by  
12 Front Sight, we allege, who breached the contract, not  
13 providing the information that's needed. There are  
14 reports due to the immigration services coming up  
15 shortly. The vast majority of the information  
16 requested here has to do with that. The remainder of  
17 the information has to do with whether or not that line  
18 of credit is really a line of credit or whether it's a  
19 sham: The two basic themes throughout which are both  
20 relevant.

21 THE COURT: Mr. Aldrich, other than the ones  
22 that have been pointed out, are there any other ones  
23 you want me to look at?

24 MR. ALDRICH: I don't have anything else to  
25 add, your Honor.

1 THE COURT: All right. For the record, it's  
2 my understanding there were objections to Requests No.  
3 14, 24, 25, 26, 27, and 32. And by my notes, regarding  
4 14 --

5 MR. ALDRICH: Your Honor, I'm sorry, I just  
6 want to be clear. So I was operating off of the Top  
7 Rank --

8 THE COURT: I think that's --

9 MR. ALDRICH: -- ones. The numbering is a  
10 little bit different because there's some typos. So  
11 would this be -- if there are some that the Court is  
12 going to limit on, you may want to read that into the  
13 record so we can make sure we have the right ones.

14 THE COURT: Okay.

15 MR. ALDRICH: Yeah. And there is -- 24 and 25  
16 are -- there is a couple of --

17 THE COURT: You know what I'm going to do? In  
18 light of -- I know -- I understand what the respective  
19 positions of the parties are, and I think out of  
20 fundamental fairness, I'm not going to rush. If you  
21 want to -- when you get back to your office over the  
22 next day or two, and just file me some sort of document  
23 as to the ones you object to, I will at least look at  
24 that.

25 I understand, Mr. Greer, what your position

1 is. I get it.

2 MR. GREER: Yeah. We need it fast because we  
3 got reporting --

4 THE COURT: Fast.

5 MR. GREER: -- requirements coming. We're not  
6 getting it from there.

7 THE COURT: I know, but I'm going to give  
8 him -- I'm not going to give him a week or two, just  
9 within the next 48 hours.

10 And what I'll do, as soon as I get that, I'll  
11 look at it. Because, for example, this is kind of how  
12 I look at it, but I want to make sure he itemizes every  
13 one so I've looked at it. I don't want to rush.

14 But, for example, there's an objection to  
15 Request No. 4, and I think this is under Top Rank. Let  
16 me look to make sure. And -- but I'll go through each  
17 one. I think it's the first one. Is that -- who's the  
18 tort. Yeah, it's Top Rank. And there's an objection  
19 to No. 24 that's been lodged by Mr. Aldrich. That one,  
20 after reviewing it, I don't mind telling you, I'm going  
21 to overrule that objection.

22 But, for example, No. 25, there's an  
23 objection. And it's all documents reflecting contracts  
24 between Front Sight, Top Rank Builders, and -- and  
25 relating to the construction agreement. I'm going to

1 grant that one because I think that's going a little  
2 bit too far. But the gist of most of what you're  
3 requesting, I understand why.

4 But what I want to do is this: I'm going to  
5 go back and look at each one with particularity. But I  
6 don't want you to be at a disadvantage, Mr. Aldrich,  
7 and just -- we cram it down. I want to give you a  
8 chance to look at it. You can lodge it. And then I'll  
9 go through it and read each one. And I just want  
10 everybody to understand, for example, I get what you're  
11 doing here, Counsel, Ms. Holbert, and Mr. Greer.

12 You're looking to see, Look. For example,  
13 Request No. 1, which I think is clearly appropriate:

14 "All documents that you used or relied upon  
15 in entering into the construction loan line of  
16 credit."

17 It's like the first example I gave is  
18 regarding Bank of America in a HELOC. The same thing,  
19 right?

20 MR. GREER: You know, do you know which ones  
21 you object to? I don't mind dealing with it if I can  
22 stip to it. I'd rather have some clean requests and  
23 get this thing rolling.

24 THE COURT: If you want to stip and narrow,  
25 maybe have the items that -- I mean, I'll give you a



1 few minutes. We'll step down and you can talk.

2 MR. ALDRICH: Just one second.

3 MR. GREER: Yeah.

4 THE COURT: For example, No. 1 is pretty good.

5 MR. ALDRICH: Okay.

6 MR. GREER: Understood.

7 MR. ALDRICH: Your Honor, I'm going to provide  
8 the objections.

9 THE COURT: Yes.

10 MR. ALDRICH: No later than Friday.

11 THE COURT: Okay.

12 MR. ALDRICH: Today is Wednesday, so no later  
13 than Friday. I will try to do it in an easy way that  
14 the Court can turn that around pretty quickly.

15 THE COURT: Right.

16 MR. ALDRICH: Okay.

17 THE COURT: Okay. I understand. And I think  
18 it's important to do that for the record. Because I  
19 don't want to rush you out of here, but we'll get it  
20 done. And if you get me -- I can --

21 Can you remind me to do this Monday? We're in  
22 trial, right?

23 I'm going to have my court clerk remind me  
24 once I get the objections to do a minute order on  
25 Monday, just kind of go through them. And this is one

1 that's -- that's -- it will be, I think, easier for me  
2 to make that quick turnaround than it would on other  
3 issues that are more complex.

4 Sir.

5 MR. ALDRICH: If I may, I have a suggestion to  
6 help with that. If it pleases the Court, perhaps we  
7 could provide a Word document with the specific  
8 requests in there, so literally the Court can instruct  
9 whoever is doing it to hit enter and type in "overrule"  
10 or whatever. Speed it up so we wouldn't have to  
11 retype. We don't do that very often in state court,  
12 but I'd be happy to offer to do that.

13 MS. HOLBERT: I can do it. I've already got  
14 it in Word.

15 MR. ALDRICH: Yeah.

16 MS. HOLBERT: So I can send you the Word of  
17 the 30 or however many there are, make sure that there  
18 aren't any typos and it's clean. I'll be happy to send  
19 it to you first. In fact, I'll send it to you first if  
20 you want and then you can make it red line, I object to  
21 this. Then he can red line --

22 MR. GREER: In fact, why don't we send -- go  
23 through -- and there's a couple of numbering issues in  
24 there. Let's just clean them all up and send the Court  
25 a clean copy and him a clean copy, and when we're done

1 we'll have a nice --

2 MS. HOLBERT: Yeah, I'm happy to do that.

3 THE COURT: But to be candid with you, I want  
4 to tell everybody, all I would do is issue a simple  
5 minute order --

6 MS. HOLBERT: Right.

7 THE COURT: -- where, okay, Request No. 1,  
8 granted.

9 Request No. 2, denied.

10 MS. HOLBERT: Perfect.

11 MR. ALDRICH: Okay.

12 THE COURT: That's all.

13 MS. HOLBERT: Right.

14 MR. GREER: Keep it simple.

15 MR. ALDRICH: We'll work on a way that makes  
16 it make sense, because one of them doesn't have the  
17 typos, and we'll get it cleaned up. We will get it  
18 submitted to the Court. But I was just offering that  
19 in case the Court wanted to do it that way.

20 THE COURT: No. We'll make it really, really  
21 simple.

22 Mr. Aldrich, I want to make sure you have a  
23 chance, sir, to sit back and reflect.

24 MR. ALDRICH: Um-hum.

25 THE COURT: Versus on the run.

1 MR. ALDRICH: I appreciate that.

2 MS. HOLBERT: And for the record, your Honor,  
3 we, of course, sent these starred with notices of  
4 intent to serve. They have not yet been served, so --

5 THE COURT: Okay.

6 MS. HOLBERT: -- they're set for the 17th, but  
7 we will, of course, get a new date. So they have not  
8 actually been served. So I don't think we need any  
9 interim order to stay or anything.

10 THE COURT: And -- and here's the thing. You  
11 can always ask to reconsider issues; right? I'm not  
12 going to --

13 But is there anything else I need to know?  
14 Because I understand what your position is. It's  
15 focusing, Look, what did they rely upon to issue this  
16 line of credit; right? That's basically what it is.  
17 And I get it.

18 And if, for whatever reason, after I issue my  
19 decision, if there's something there you want to -- I'm  
20 not saying you're waiving your right to come back  
21 again, but ultimately, who knows. When you get all the  
22 documents, for example, Request No. 1 might cover  
23 everything. Right?

24 MR. ALDRICH: All right. Anyway, your Honor,  
25 we appreciate your time today.

1 MS. HOLBERT: Yes.

2 THE COURT: Okay.

3 MR. GREER: Thank you, your Honor.

4 THE COURT: Enjoy your day.

5 MS. HOLBERT: Thank you.

6 THE COURT: And remind me.

7 In fact, as far as the requests are concerned,  
8 you're going to be sending me new requests, right? So  
9 I don't have to rely upon these. I just need to go  
10 back through them again.

11 MS. HOLBERT: Correct. Right?

12 MR. GREER: What?

13 MS. HOLBERT: You'll actually deliver that to  
14 him in a hard copy so that he's got a clean hard copy  
15 of what he needs to deal with?

16 MR. ALDRICH: Yeah. I figure I'd just file a  
17 supplement.

18 MS. HOLBERT: Okay. Right. Right.

19

20 (Proceedings were concluded.)

21

22 \* \* \* \* \*

23

24

25

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1 REPORTER'S CERTIFICATE  
2 STATE OF NEVADA)  
3 :SS  
4 COUNTY OF CLARK)  
5 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO  
6 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE  
7 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE  
8 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID  
9 STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT  
10 AND UNDER MY DIRECTION AND SUPERVISION AND THE  
11 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND  
12 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE  
13 PROCEEDINGS HAD.

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

17 \_\_\_\_\_  
18 PEGGY ISOM, RMR, CCR 541  
19  
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<p><b>IN UNISON: [1]</b> 4/7 <b>MR. ALDRICH: [246]</b> <b>MR. GREER: [157]</b> 4/14 7/19 8/5 8/13 8/17 8/25 9/2 9/11 9/16 9/19 10/3 10/7 11/13 12/17 12/20 12/23 13/19 14/5 14/15 14/20 15/9 16/12 16/15 16/21 16/23 17/1 18/5 18/10 18/14 18/18 18/20 24/4 24/9 31/6 35/18 35/20 35/23 36/2 36/16 43/24 44/1 44/24 45/1 45/9 45/11 45/15 45/20 45/25 46/3 48/20 48/23 50/19 50/23 53/3 53/8 53/13 54/16 54/18 56/5 56/8 57/3 57/5 57/9 58/8 66/8 67/20 69/6 69/19 72/22 74/21 74/23 75/4 83/15 85/21 88/2 89/8 89/10 90/4 91/4 91/7 92/4 92/11 94/20 94/22 96/9 96/21 97/9 97/23 98/6 98/25 99/6 99/17 100/4 101/18 101/20 101/23 102/3 102/7 102/23 103/1 103/3 103/9 104/23 104/25 105/3 105/8 105/10 108/8 117/9 118/3 118/11 118/15 118/20 118/24 119/2 119/7 119/24 120/10 120/21 121/16 125/3 125/5 125/18 125/25 126/2 127/1 127/14 129/22 133/12 133/18 134/22 136/5 136/12 136/19 137/4 137/8 138/22 139/24 140/18 140/24 141/8 141/10 143/21 144/17 146/8 147/11</p>	<p>147/20 148/10 150/2 150/5 151/20 152/3 152/6 153/22 154/14 156/3 156/12 <b>MS. HOLBERT: [56]</b> 4/12 5/3 6/19 7/24 9/1 9/13 9/17 13/16 13/20 15/8 17/13 17/17 18/6 59/6 59/18 60/3 60/7 60/9 60/23 61/10 61/14 62/25 63/10 64/2 64/12 70/25 71/8 71/12 71/15 71/18 71/24 73/19 100/21 101/6 104/13 125/6 125/9 125/12 125/15 125/23 133/15 138/19 141/1 153/13 153/16 154/2 154/6 154/10 154/13 155/2 155/6 156/1 156/5 156/11 156/13 156/18 <b>THE COURT CLERK: [2]</b> 14/11 15/5 <b>THE COURT REPORTER: [7]</b> 8/3 74/9 96/24 118/7 118/16 126/24 139/20 <b>THE COURT: [304]</b>  \$ <b>\$100,000 [2]</b> 55/22 56/1 <b>\$20,000 [1]</b> 126/12 <b>\$36 [2]</b> 132/17 137/1 <b>\$36 million [2]</b> 132/17 137/1 <b>\$360,000 [1]</b> 46/18 <b>\$50 [1]</b> 138/5 <b>\$500 [1]</b> 138/5 <b>\$500,000 [3]</b> 40/15 40/24 46/17 <b>\$6 [1]</b> 55/9 <b>\$6 million [1]</b> 55/9 <b>\$6.3 [1]</b> 55/14 <b>\$6.3 million [1]</b> 55/14</p>	<p>' <b>'70s [1]</b> 115/2 - <b>-o0o [4]</b> 31/3 31/4 74/16 74/17 <b>1</b> <b>10-13 [1]</b> 13/17 <b>100 [4]</b> 2/16 34/13 47/19 96/22 <b>100 percent [1]</b> 94/18 <b>100,000 [1]</b> 56/2 <b>11-13 [4]</b> 13/18 13/19 13/20 13/21 <b>12 [7]</b> 20/20 21/13 26/7 26/16 108/14 111/12 117/12 <b>13 [7]</b> 13/17 13/18 13/19 13/20 13/21 117/13 135/5 <b>13-page [1]</b> 139/12 <b>14 [10]</b> 7/22 117/21 117/25 139/9 143/15 143/15 144/4 144/6 149/3 149/4 <b>14-day [2]</b> 116/5 120/15 <b>140 [1]</b> 46/19 <b>14th [1]</b> 8/15 <b>15 [3]</b> 144/5 144/12 144/13 <b>15th [2]</b> 5/15 8/19 <b>16 [4]</b> 17/11 18/2 58/20 58/23 <b>16.1 [4]</b> 58/20 60/17 61/3 118/19 <b>160 [1]</b> 3/8 <b>1601 [1]</b> 3/7 <b>17150 [1]</b> 2/15 <b>17th [1]</b> 155/6 <b>19 [1]</b> 129/17 <b>1975 [1]</b> 3/11 <b>1:00 [1]</b> 14/1 <b>1:27 [1]</b> 4/2 <b>2</b> <b>20 [14]</b> 54/20 54/21 54/22 54/24 55/1 55/1 55/2 56/4 56/9 56/10 56/14 56/18 65/17 129/17 <b>2011 [1]</b> 23/1 <b>2012 [8]</b> 31/18 37/22 41/11 77/1</p>	<p>81/25 82/18 93/19 108/1 <b>2013 [3]</b> 18/24 41/12 93/19 <b>2014 [2]</b> 82/5 93/19 <b>2015 [2]</b> 31/10 82/5 <b>2016 [12]</b> 18/24 20/20 21/13 25/23 26/7 26/16 31/12 32/6 37/11 46/14 108/15 111/12 <b>2017 [2]</b> 25/25 96/17 <b>2018 [1]</b> 26/2 <b>2019 [2]</b> 1/21 4/1 <b>2020 [1]</b> 64/21 <b>206 [1]</b> 2/6 <b>227-1975 [1]</b> 3/11 <b>23rd [25]</b> 5/20 6/9 7/2 7/17 8/19 9/7 10/3 10/8 10/13 11/10 12/18 12/21 13/11 13/24 15/20 24/25 71/24 72/1 72/17 72/19 72/24 73/7 73/14 119/12 139/22 <b>24 [5]</b> 145/5 145/7 149/3 149/15 150/19 <b>25 [5]</b> 145/15 147/9 149/3 149/15 150/22 <b>2510 [1]</b> 2/5 <b>26 [3]</b> 87/19 146/1 149/3 <b>27 [2]</b> 146/7 149/3 <b>28 [1]</b> 147/25 <b>3</b> <b>30 [3]</b> 65/17 130/11 153/17 <b>31 [1]</b> 128/4 <b>32 [3]</b> 128/4 148/2 149/3 <b>35 million [1]</b> 37/13 <b>3900 [1]</b> 2/8 <b>3:05 [1]</b> 74/13 <b>3:10 [1]</b> 74/14 <b>4</b> <b>40 [4]</b> 54/21 54/25 55/2 117/14 <b>48 [1]</b> 150/9 <b>4:00 [3]</b> 14/20 15/2 18/8</p>	<p><b>4:00 o'clock [1]</b> 14/19 <b>5</b> <b>50 million [2]</b> 20/24 37/12 <b>500,000 [1]</b> 111/23 <b>520-ish [1]</b> 117/1 <b>541 [2]</b> 1/24 157/17 <b>5490 [1]</b> 3/10 <b>550 [1]</b> 116/9 <b>579-3900 [1]</b> 2/8 <b>5th [2]</b> 5/15 8/20 <b>6</b> <b>6,000 [1]</b> 118/11 <b>600 [4]</b> 116/9 117/10 117/14 117/24 <b>613-6677 [1]</b> 2/18 <b>613-6680 [1]</b> 2/19 <b>65 [9]</b> 17/10 18/1 58/22 60/1 61/8 61/11 62/15 63/13 65/16 <b>6677 [1]</b> 2/18 <b>6680 [1]</b> 2/19 <b>7</b> <b>7,000 [3]</b> 91/23 99/14 99/18 <b>70 million [1]</b> 20/23 <b>702 [3]</b> 2/8 3/10 3/11 <b>75 million [2]</b> 37/13 37/20 <b>8</b> <b>853-5490 [1]</b> 3/10 <b>858 [2]</b> 2/18 2/19 <b>89074 [1]</b> 2/7 <b>89146 [1]</b> 3/9 <b>9</b> <b>90 [1]</b> 118/1 <b>92127 [1]</b> 2/17 <b>9:30 [1]</b> 14/11 : <b>:SS [1]</b> 157/2 <b>A</b> <b>A's [1]</b> 75/18 <b>abide [3]</b> 84/5 112/5 113/22 <b>ability [7]</b> 33/21</p>
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<p><b>A</b>  <b>ability... [6]</b> 33/21  46/16 55/4 70/20  132/14 157/11  <b>able [9]</b> 21/20  36/20 65/12 67/16  84/2 84/22 95/19  121/16 133/3  <b>about [87]</b> 9/24  10/6 10/22 13/7  17/21 18/1 21/11  24/19 24/24 26/7  27/6 28/3 31/11  33/6 34/13 38/12  39/14 40/13 40/22  43/18 45/4 51/8  51/11 51/13 55/15  59/14 63/2 64/8  65/18 66/20 67/23  69/17 69/20 70/1  73/13 74/13 77/22  78/17 79/10 79/13  83/6 83/7 84/8  84/15 85/3 91/25  92/1 92/7 93/17  94/12 94/18 95/18  97/10 98/12 99/21  102/17 104/19  108/7 108/11  110/19 110/21  111/3 111/11 112/3  116/14 117/15  127/25 128/8 132/1  134/4 134/5 134/8  134/15 136/17  136/18 136/24  137/6 137/7 137/11  138/12 138/21  139/10 139/23  140/22 142/14  146/10 146/11  <b>absolutely [11]</b>  25/7 35/20 35/20  36/15 40/4 92/10  94/18 111/19 117/5  122/10 142/6  <b>abuse [1]</b> 52/2  <b>accelerate [1]</b>  70/20  <b>accept [3]</b> 25/25  31/9 84/3  <b>access [5]</b> 93/11  100/1 137/18  137/25 138/6  <b>accommodation [1]</b> 13/10  <b>according [1]</b> 22/8  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85/13 91/13 112/6  <b>adequate [1]</b></p>	<p>67/21  <b>adjust [1]</b> 103/5  <b>administratively [2]</b> 5/22 69/6  <b>admissibility [2]</b>  82/9 124/20  <b>admissible [3]</b>  23/16 69/16 82/7  <b>admit [2]</b> 112/19  134/20  <b>admitted [5]</b> 69/14  69/22 80/11 91/18  110/6  <b>admittedly [2]</b>  81/23 112/14  <b>advance [4]</b> 5/7  6/3 6/11 6/24  <b>advanced [2]</b> 6/8  63/18  <b>advantage [4]</b>  26/25 56/18 78/19  97/18  <b>adverse [1]</b> 6/12  <b>advise [1]</b> 84/4  <b>advisor [2]</b> 46/5  47/3  <b>advisors [19]</b> 19/3  31/13 32/9 32/9  36/8 46/10 46/19  47/9 47/12 49/5  49/8 76/24 82/16  105/22 106/3  106/12 107/1 107/8  121/1  <b>affect [1]</b> 33/18  <b>affecting [1]</b> 77/3  <b>affirmative [3]</b>  42/8 42/13 104/25  <b>afforded [1]</b>  105/16  <b>after [22]</b> 6/10  7/21 10/24 16/9  16/12 25/22 31/10  31/18 32/5 32/10  35/23 45/13 46/14  57/23 63/15 71/10  103/24 106/15  111/11 120/22  150/20 155/18  <b>afternoon [6]</b> 4/6  4/7 4/10 4/12 14/15  23/19  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(2) ability... - already

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(4) as... - belabor

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(6) case... - confusion

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Peggy Isom, CCR 541, RMR

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Peggy Isom, CCR 541, RMR

(11) find - given

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(12) given... - he

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(15) issue... - know

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<p><b>L</b></p> <p><b>looking [17]</b> 14/6 22/19 26/11 42/5 43/19 53/25 80/19 88/24 88/25 90/1 100/18 122/21 128/21 135/4 143/11 147/12 151/12 <b>looks [4]</b> 46/24 66/10 66/12 129/8 <b>Los [1]</b> 14/16 <b>Los Angeles [1]</b> 14/16 <b>lose [1]</b> 64/25 <b>lost [1]</b> 117/20 <b>lot [15]</b> 11/4 11/20 12/7 13/7 17/16 24/23 34/12 50/20 62/20 64/1 73/3 105/11 133/16 137/11 146/9 <b>love [3]</b> 7/16 73/24 94/22 <b>low [1]</b> 26/5 <b>low-hanging [1]</b> 26/5 <b>LVD [23]</b> 15/16 21/15 21/18 21/19 32/10 32/22 32/23 46/20 67/17 77/23 77/25 78/4 78/5 78/9 86/14 86/19 86/19 97/13 106/19 106/22 121/18 130/4 132/3 <b>LVDF [2]</b> 13/23 39/18 <b>LVDF's [1]</b> 4/21</p> <p><b>M</b></p> <p><b>ma'am [4]</b> 64/11 64/17 74/15 100/20 <b>made [21]</b> 23/24 23/25 24/3 24/6 24/18 29/24 37/8 45/3 57/7 64/1 66/13 79/13 83/13 86/6 91/20 92/21 106/15 108/16 111/6 120/22 122/8 <b>mail [1]</b> 101/23 <b>main [3]</b> 60/9 81/19 128/6 <b>majority [2]</b> 120/18 148/15 <b>make [72]</b> 5/25 11/7 13/13 15/6</p>	<p>15/16 15/16 19/25 20/22 20/25 24/7 28/6 29/17 31/25 32/1 34/16 34/22 35/3 35/6 36/20 37/20 42/23 42/25 44/18 47/7 47/15 48/7 48/11 48/17 49/2 52/18 53/18 56/12 56/20 58/7 66/13 66/19 67/4 67/5 69/3 69/12 70/17 70/17 71/11 84/20 86/5 94/4 98/21 100/8 102/22 103/7 109/23 117/22 120/13 123/8 123/18 129/14 129/14 132/22 135/16 136/22 140/15 141/14 142/1 149/13 150/12 150/16 153/2 153/17 153/20 154/16 154/20 154/22 <b>makes [14]</b> 7/25 8/2 20/16 30/13 37/5 44/11 44/12 47/5 67/22 94/2 119/24 129/1 136/3 154/15 <b>making [8]</b> 40/11 44/17 45/22 92/8 108/10 116/1 125/12 140/14 <b>MANAGEMENT [1]</b> 1/9 <b>manager [3]</b> 75/24 76/21 90/24 <b>managers [1]</b> 89/1 <b>manner [1]</b> 99/21 <b>many [11]</b> 29/22 52/12 69/22 71/21 72/5 81/14 82/4 108/11 111/7 142/3 153/17 <b>March [5]</b> 64/21 77/1 81/25 82/18 108/1 <b>March 2012 [4]</b> 77/1 81/25 82/18 108/1 <b>March 5 [1]</b> 64/21 <b>mark [2]</b> 45/13 45/24 <b>marketed [1]</b></p>	<p>96/16 <b>marketing [13]</b> 25/19 25/22 25/24 26/1 31/10 31/22 32/7 32/22 39/19 46/11 49/8 89/16 110/17 <b>marketings [1]</b> 89/15 <b>Masonry [1]</b> 145/11 <b>master [2]</b> 116/4 116/5 <b>material [1]</b> 77/5 <b>matter [15]</b> 7/5 7/6 20/6 22/18 23/17 41/3 48/15 53/19 57/1 77/10 92/20 93/21 99/18 127/3 157/6 <b>matters [1]</b> 62/9 <b>may [29]</b> 8/17 9/22 17/23 20/20 21/13 26/7 26/16 31/10 31/12 31/18 32/6 37/11 37/22 40/18 46/14 49/9 63/17 65/1 66/6 71/11 77/17 78/23 80/8 92/4 108/14 111/12 134/20 149/12 153/5 <b>May 12 [6]</b> 20/20 21/13 26/7 26/16 108/14 111/12 <b>May 2012 [1]</b> 31/18 <b>May 2016 [1]</b> 32/6 <b>maybe [29]</b> 5/22 6/8 6/25 7/11 11/2 12/10 14/1 14/7 15/19 16/2 16/19 39/5 46/18 48/18 56/2 57/23 58/11 65/17 72/16 73/11 73/12 79/5 99/8 101/4 110/3 114/4 125/21 144/22 151/25 <b>me [75]</b> 7/10 7/10 8/20 9/8 11/9 11/12 13/2 13/25 14/7 16/3 24/19 28/10 30/24 34/16 38/15 40/19 43/1 45/6 46/2 48/5 48/14 50/10 54/25 55/2 56/10 56/11 58/15</p>	<p>59/25 61/23 62/1 62/16 62/23 65/20 71/9 79/5 79/13 80/2 83/23 83/24 84/1 85/9 85/18 90/1 94/13 94/13 95/23 95/24 96/4 96/4 100/7 112/17 112/20 114/11 120/17 120/21 125/11 129/7 134/20 139/10 139/25 142/11 143/8 144/13 145/22 145/24 146/23 148/23 149/22 150/16 152/20 152/21 152/23 153/1 156/6 156/8 <b>mean [70]</b> 7/16 11/17 11/18 12/9 12/16 15/25 16/4 25/5 26/4 29/8 34/1 34/5 34/8 40/2 42/7 42/9 49/3 49/12 49/13 50/12 51/4 51/11 51/23 54/14 59/1 59/10 61/20 62/10 68/23 69/4 69/5 69/17 69/19 70/2 72/8 72/10 72/15 72/16 86/1 88/19 89/14 91/18 92/6 92/12 95/24 96/2 98/9 101/4 102/11 106/8 107/11 107/14 115/25 117/14 120/15 124/2 127/23 128/7 129/6 130/10 137/5 140/6 140/10 140/13 141/17 142/18 143/9 144/6 145/22 151/25 <b>meaningful [1]</b> 122/4 <b>means [2]</b> 5/10 52/14 <b>meant [1]</b> 12/14 <b>medical [1]</b> 115/6 <b>meet [4]</b> 70/5 98/17 102/3 102/20 <b>meeting [4]</b> 26/10 60/17 96/11 111/11 <b>member [3]</b> 75/24 76/20 90/24</p>	<p><b>members [3]</b> 34/14 89/1 95/17 <b>memory [1]</b> 39/15 <b>mentioned [4]</b> 80/3 109/2 134/9 139/10 <b>merits [1]</b> 63/18 <b>message [1]</b> 117/20 <b>met [1]</b> 21/6 <b>method [1]</b> 133/19 <b>might [20]</b> 42/8 42/8 52/11 54/14 58/11 70/8 73/23 73/24 79/2 92/8 101/8 112/4 113/20 122/12 124/12 124/18 124/20 136/21 145/3 155/22 <b>million [12]</b> 20/23 20/24 37/12 37/13 37/13 37/20 55/9 55/14 117/19 132/17 137/1 138/5 <b>millions [2]</b> 37/14 93/22 <b>mind [7]</b> 35/13 58/10 62/5 62/12 70/11 150/20 151/21 <b>minimum [2]</b> 26/13 111/14 <b>minute [3]</b> 10/22 152/24 154/5 <b>minutes [6]</b> 40/23 65/17 65/17 127/25 147/23 152/1 <b>misallocation [1]</b> 19/14 <b>misappropriated [1]</b> 106/13 <b>mislead [1]</b> 124/15 <b>misread [2]</b> 24/5 24/5 <b>misrepresentation [3]</b> 19/13 26/22 27/1 <b>misrepresentation s [1]</b> 21/10 <b>missed [2]</b> 131/17 139/24 <b>missing [4]</b> 42/18 68/18 87/6 141/15 <b>misspending [1]</b> 19/13 <b>misuse [1]</b> 114/5 <b>misused [1]</b> 97/25</p>
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<p><b>M</b> <b>model [1]</b> 90/10 <b>modifying [1]</b> 104/11 <b>Monday [5]</b> 8/2 8/5 8/7 152/21 152/25 <b>monetary [3]</b> 19/20 19/24 134/14 <b>money [51]</b> 19/17 20/23 21/1 21/4 21/12 21/16 21/20 21/21 25/21 26/12 31/9 31/20 32/1 32/4 32/6 32/14 32/16 32/18 32/25 32/25 33/13 39/22 46/6 46/7 46/9 46/10 46/12 47/10 47/11 49/7 54/20 55/4 55/23 78/7 80/23 80/24 84/24 86/18 86/19 106/21 106/24 108/12 113/13 113/14 120/23 121/2 121/4 121/15 121/18 122/13 130/3 <b>monies [9]</b> 21/17 23/5 31/12 32/11 106/13 106/14 114/9 124/13 131/10 <b>month [4]</b> 12/11 20/1 65/5 73/9 <b>months [6]</b> 11/14 64/22 72/13 93/25 97/14 138/25 <b>Morales [9]</b> 127/15 127/21 128/8 128/17 131/20 134/7 135/21 145/10 146/4 <b>more [28]</b> 26/12 30/24 40/17 43/1 46/12 52/11 58/11 60/15 62/5 62/17 63/4 66/25 72/4 72/5 73/8 76/16 87/24 87/25 113/21 122/25 123/17 125/4 125/5 125/6 143/3 145/24 147/23 153/3 <b>morning [1]</b> 134/13 <b>mortgagee [1]</b> 121/7</p>	<p><b>most [7]</b> 68/20 76/8 98/11 112/15 131/17 134/11 151/2 <b>mostly [2]</b> 111/20 119/20 <b>motion [62]</b> 4/19 4/20 4/25 5/10 6/3 6/15 6/24 7/9 7/21 8/21 9/3 9/12 9/13 9/14 12/15 13/22 15/12 16/1 16/3 16/9 16/16 17/7 17/25 18/11 25/1 30/11 40/12 48/9 52/16 53/17 55/16 67/1 71/25 74/5 74/22 81/17 84/14 87/18 88/23 99/8 104/7 104/13 109/2 111/1 115/20 116/15 119/13 119/17 123/14 126/4 127/14 127/17 127/24 128/14 128/15 138/25 139/16 139/18 139/21 140/1 140/22 141/3 <b>motion's [1]</b> 80/4 <b>motions [13]</b> 1/16 11/9 12/11 13/5 17/8 17/22 18/3 70/15 70/15 73/25 74/3 74/19 105/14 <b>move [21]</b> 5/13 6/2 6/11 6/14 7/1 10/4 10/5 10/11 11/12 13/24 16/17 21/4 37/6 47/22 60/14 64/23 66/2 66/15 73/1 105/2 117/2 <b>moved [4]</b> 10/9 10/10 11/11 11/11 <b>moving [1]</b> 6/5 <b>Mr [2]</b> 25/9 79/4 <b>Mr. [125]</b> 4/19 10/6 10/14 11/16 15/24 22/8 22/14 22/22 23/8 23/13 23/22 23/24 24/19 25/8 25/17 25/23 26/11 26/11 30/1 31/5 31/7 32/6 32/7 38/13 39/2 39/14 41/20 46/17 48/25 49/4 53/15 54/10</p>	<p>57/18 58/1 67/9 68/1 70/22 72/5 72/25 75/6 75/9 76/9 77/25 78/11 79/5 79/9 80/8 80/11 80/19 81/1 81/5 82/14 82/15 85/6 85/14 85/21 86/21 87/13 88/5 88/13 89/24 90/1 90/8 90/14 90/17 91/13 91/18 92/18 92/19 93/9 93/9 94/6 94/11 95/9 95/12 95/25 96/10 96/10 96/15 97/3 98/16 98/19 102/5 103/8 106/10 108/10 108/15 108/19 110/6 110/14 110/15 110/17 110/20 111/6 111/12 112/15 113/8 114/15 120/3 120/22 121/19 123/18 126/15 126/20 130/4 133/25 134/8 134/9 135/4 135/24 137/10 138/15 139/25 140/17 141/13 142/4 145/2 145/21 147/24 148/21 149/25 150/19 151/6 151/11 154/22 <b>Mr. Aldrich [47]</b> 4/19 10/6 11/16 15/24 22/14 30/1 31/7 32/7 38/13 46/17 48/25 53/15 57/18 58/1 67/9 68/1 70/22 72/5 78/11 79/5 85/21 86/21 90/1 95/25 97/3 98/16 102/5 108/19 114/15 120/3 121/19 123/18 126/15 126/20 135/4 137/10 138/15 139/25 140/17 141/13 142/4 145/21 147/24 148/21 150/19 151/6 154/22 <b>Mr. Aldrich's [1]</b></p>	<p>120/22 <b>Mr. Carter [1]</b> 96/10 <b>Mr. Dziubla [34]</b> 23/13 25/17 25/23 26/11 39/14 75/6 75/9 80/8 80/11 87/13 90/14 90/17 91/18 92/18 92/19 93/9 94/6 94/11 95/9 96/15 106/10 108/10 108/15 110/6 110/14 110/15 110/17 111/6 111/12 112/15 113/8 130/4 134/8 135/24 <b>Mr. Dziubla's [7]</b> 76/9 81/1 82/14 88/5 88/13 89/24 90/8 <b>Mr. Evans [2]</b> 22/22 23/8 <b>Mr. Fleming [3]</b> 26/11 93/9 110/20 <b>Mr. Fleming's [2]</b> 81/5 82/15 <b>Mr. Greer [21]</b> 23/22 23/24 24/19 25/8 31/5 39/2 41/20 49/4 54/10 72/25 79/9 80/19 85/6 85/14 91/13 98/19 103/8 133/25 134/9 149/25 151/11 <b>Mr. Greer's [1]</b> 10/14 <b>Mr. Keller [1]</b> 96/10 <b>Mr. Piazza [4]</b> 32/6 77/25 95/12 145/2 <b>Mr. Piazza's [1]</b> 22/8 <b>Mrs [1]</b> 121/17 <b>Ms. [6]</b> 59/22 73/18 100/20 103/7 125/10 151/11 <b>Ms. Holbert [6]</b> 59/22 73/18 100/20 103/7 125/10 151/11 <b>much [8]</b> 26/17 72/4 81/1 91/19 107/14 109/16 130/6 138/2 <b>must [1]</b> 44/2 <b>my [92]</b> 5/1 5/5</p>	<p>5/21 13/9 13/14 20/19 23/20 23/23 24/1 24/2 27/5 34/4 35/11 39/11 40/14 40/24 41/5 41/18 42/10 43/23 44/25 45/22 48/21 49/4 49/10 49/23 50/5 50/7 50/15 51/14 51/22 54/20 54/24 54/24 57/6 60/8 62/13 63/25 64/19 65/8 65/16 66/21 68/1 68/7 68/24 73/23 80/24 81/4 81/15 83/12 84/1 84/4 92/4 95/24 99/20 100/11 101/14 102/20 108/11 109/15 111/23 112/14 113/14 113/25 115/5 115/13 116/1 116/14 117/1 121/8 122/5 124/15 125/21 127/25 128/14 128/16 133/22 134/25 135/18 138/9 138/11 138/21 139/11 141/19 149/2 149/3 152/23 155/18 157/9 157/11 157/14 157/14 <b>myself [2]</b> 63/3 81/18 <b>N</b> <b>Nam [1]</b> 80/14 <b>name [4]</b> 92/23 95/11 99/3 157/14 <b>named [2]</b> 107/7 121/12 <b>names [24]</b> 77/22 86/9 86/10 87/7 87/7 87/8 88/15 89/3 90/12 90/18 92/14 93/3 97/19 97/19 97/24 98/8 98/15 98/17 98/20 98/21 99/17 100/3 126/15 126/16 <b>narrow [2]</b> 88/3 151/24 <b>narrowed [1]</b> 88/20 <b>narrowly [10]</b> 80/17 81/11 81/22</p>
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(18) model - narrowly

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<p><b>N</b>  <b>narrowly... [7]</b>  85/4 85/22 85/25  87/24 87/25 88/12  92/2  <b>nation [1]</b> 34/19  <b>nature [3]</b> 83/7  124/16 137/19  <b>necessarily [4]</b>  16/18 55/6 87/11  141/25  <b>necessary [2]</b>  93/12 142/1  <b>need [67]</b> 7/11  7/20 8/3 15/18  15/23 16/2 17/5  22/11 24/2 25/15  26/13 33/14 40/21  54/1 54/21 59/14  64/7 66/19 68/17  69/3 71/5 71/15  72/5 74/11 84/25  86/4 86/9 86/10  87/7 87/7 87/8 88/8  90/18 90/18 92/14  95/5 95/7 95/9  96/24 97/18 97/18  97/19 97/21 98/14  98/17 98/20 98/20  113/14 118/7  118/16 119/8 119/9  122/3 129/10 130/6  130/21 131/23  132/25 136/12  137/11 139/20  140/9 141/16 150/2  155/8 155/13 156/9  <b>needed [2]</b> 145/22  148/13  <b>needs [5]</b> 40/19  50/6 76/13 84/23  156/15  <b>negative [1]</b> 12/14  <b>negligent [1]</b> 27/1  <b>neither [1]</b> 44/9  <b>NES [2]</b> 107/23  112/2  <b>nets [1]</b> 119/10  <b>network [1]</b> 93/24  <b>NEVADA [11]</b> 1/7  4/1 8/13 51/25  62/10 63/8 115/8  126/23 127/1 157/2  157/15  <b>never [5]</b> 6/6  29/25 70/10 80/11  103/24  <b>new [5]</b> 31/19</p>	<p>120/16 137/16  155/7 156/8  <b>next [16]</b> 8/2 8/9  8/16 41/5 61/8 73/8  73/9 73/15 74/18  81/17 82/10 105/2  105/4 129/2 149/22  150/9  <b>nexus [1]</b> 48/12  <b>nice [1]</b> 154/1  <b>nicely [1]</b> 139/1  <b>nine [1]</b> 51/8  <b>Ninety [1]</b> 118/1  <b>no [107]</b> 1/1 6/16  7/1 10/12 12/17  16/25 17/3 19/10  21/10 21/14 23/6  23/7 23/15 24/20  30/25 31/20 31/24  32/14 32/15 32/17  37/16 42/19 43/7  43/8 43/17 46/15  46/16 46/16 49/17  49/17 50/22 53/5  53/5 53/5 57/3  60/21 74/14 77/9  80/19 81/22 81/23  83/11 85/19 86/8  86/10 88/24 89/22  91/9 91/13 91/14  92/22 94/2 94/19  98/25 100/15  100/21 101/5 106/4  106/20 106/23  108/23 109/4  109/21 116/20  116/21 116/21  119/19 121/6  121/22 123/10  124/8 127/10 135/7  135/13 136/20  138/14 139/6  139/10 139/21  140/18 140/19  141/4 141/9 142/20  143/4 143/15  143/15 144/4 144/5  144/6 144/12  144/13 145/5 145/7  145/15 146/1 148/2  149/2 150/22  151/13 152/4  152/10 152/12  154/7 154/9 154/20  155/22  <b>No. [9]</b> 78/24 81/8  126/10 126/10  143/9 143/9 146/7</p>	<p>150/15 150/19  <b>No. 24 [1]</b> 150/19  <b>No. 27 [1]</b> 146/7  <b>No. 3 [2]</b> 126/10  143/9  <b>No. 4 [4]</b> 78/24  126/10 143/9  150/15  <b>No. 5 [1]</b> 81/8  <b>noise [1]</b> 100/8  <b>non [2]</b> 50/3 95/12  <b>non-identifying [1]</b>  95/12  <b>non-jury [1]</b> 50/3  <b>None [2]</b> 106/7  138/21  <b>nonetheless [2]</b>  40/4 81/19  <b>nonissue [1]</b> 12/1  <b>nonjudicial [1]</b>  20/12  <b>nonrelevant [1]</b>  129/1  <b>normally [2]</b> 51/23  114/3  <b>not [165]</b>  <b>note [4]</b> 10/18  22/14 24/16 85/8  <b>noted [1]</b> 147/9  <b>notes [3]</b> 120/22  149/3 157/8  <b>nothing [13]</b> 36/6  63/7 99/14 116/22  120/12 128/7  132/10 134/14  138/24 140/11  140/17 143/2 143/3  <b>notice [15]</b> 17/11  18/1 19/21 19/22  58/22 59/24 60/2  60/15 61/11 67/20  67/21 85/9 107/20  134/14 148/10  <b>notices [2]</b> 127/21  155/3  <b>notwithstanding [1]</b> 62/11  <b>November [3]</b> 5/4  5/15 65/5  <b>November 5 [1]</b>  5/4  <b>now [61]</b> 5/22 7/20  7/25 14/7 15/10  18/12 20/25 22/6  22/18 24/4 25/1  26/18 26/20 27/5  32/3 39/15 40/12  40/20 47/20 47/20</p>	<p>47/21 50/14 52/9  52/15 59/8 59/17  61/16 64/20 68/23  70/15 71/1 71/21  72/9 72/24 73/3  73/25 74/10 77/17  81/23 83/1 83/20  88/17 90/12 95/2  95/7 95/8 99/9  105/21 108/19  111/2 111/16  112/14 113/3 123/7  127/12 127/14  131/17 131/19  138/2 143/11  145/20  <b>NRCP [1]</b> 58/22  <b>nullification [1]</b>  34/24  <b>number [15]</b> 62/1  64/20 69/21 75/22  83/2 83/9 89/8  91/12 94/18 107/20  107/25 107/25  111/15 111/16  112/11  <b>numbering [3]</b>  128/3 149/9 153/23  <b>Numbers [1]</b>  129/17  <b>NV [3]</b> 1/24 2/7 3/9  <b>Nye [2]</b> 146/6  146/13</p>	<p>149/2 152/8 152/24  <b>obligation [4]</b>  32/17 33/8 55/4  107/11  <b>obtain [3]</b> 134/2  136/6 136/25  <b>obtained [2]</b>  135/20 137/3  <b>obtaining [1]</b>  106/16  <b>obvious [1]</b> 46/2  <b>obviously [2]</b>  59/11 131/9  <b>occasions [1]</b>  142/4  <b>occurred [1]</b>  111/11  <b>OCTOBER [9]</b> 1/21  4/1 10/25 11/3  18/24 22/6 24/1  24/3 25/22  <b>October 2016 [1]</b>  18/24  <b>October 4 [1]</b> 22/6  <b>off [15]</b> 8/10 9/18  16/20 17/6 39/15  42/10 45/12 57/15  79/25 80/5 84/16  97/13 99/9 103/23  149/6  <b>offer [2]</b> 91/20  153/12  <b>offering [1]</b> 154/18  <b>office [6]</b> 101/14  102/3 102/21  146/20 149/21  157/14  <b>officer [3]</b> 75/24  76/20 90/24  <b>officers [1]</b> 89/1  <b>offices [3]</b> 100/13  144/20 145/2  <b>often [2]</b> 62/14  153/11  <b>oftentimes [1]</b>  78/12  <b>Oh [1]</b> 13/21  <b>okay [85]</b> 7/3 7/14  10/1 12/19 12/25  14/12 16/10 18/15  24/8 38/12 40/16  43/9 45/19 45/25  48/5 48/25 49/3  49/22 53/13 57/5  58/4 58/18 58/23  58/25 60/22 70/24  73/17 73/20 74/8  74/18 75/4 79/7</p>
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<p><b>O</b>  <b>okay... 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(26) still... - then

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<b>T</b>	137/22 138/4 138/16 138/20 139/8 140/9 140/17 141/15 145/24 146/11 147/2 147/13 147/21 148/13 148/22 149/2 149/11 149/15 149/16 150/6 153/8 153/17 153/17 153/24 155/13 155/19 <b>there's [75]</b> 4/17 7/1 11/8 11/20 17/16 19/10 21/24 22/21 23/7 23/15 25/3 27/20 27/25 28/2 29/5 31/19 31/20 33/25 34/15 34/15 34/25 43/7 46/4 46/9 48/12 50/13 52/6 54/2 56/21 61/25 61/25 62/19 63/7 67/23 68/6 74/4 74/5 75/9 79/15 84/15 85/8 86/8 86/10 86/25 89/22 91/8 92/22 95/5 97/2 101/5 102/16 103/23 109/4 110/11 111/24 112/16 113/17 114/5 122/17 122/18 123/3 123/4 123/16 128/3 128/4 132/10 142/7 142/11 142/16 149/10 150/14 150/18 150/22 153/23 155/19 <b>thereabouts [1]</b> 10/21 <b>thereafter [2]</b> 108/16 157/7 <b>therefore [1]</b> 47/2 <b>these [72]</b> 11/8 21/9 22/12 28/5 40/2 45/2 45/3 45/10 58/13 74/24 78/6 78/18 79/3 79/6 80/2 80/16 81/16 82/6 82/7 82/11 85/2 85/16 85/22 87/10 87/15 87/19 89/11 89/20 91/1 93/17 94/1 94/12 97/10 97/14	98/7 98/13 98/17 105/15 105/16 106/8 111/15 111/25 113/8 113/25 114/20 122/8 124/14 128/2 128/5 128/12 129/8 129/12 129/16 129/22 130/11 131/24 132/16 132/25 133/2 133/9 133/16 143/11 145/21 145/21 146/8 146/9 146/17 146/22 146/23 146/23 155/3 156/9 <b>they [194]</b> <b>they're [55]</b> 25/6 25/6 25/8 26/14 28/18 33/14 33/15 34/17 40/20 48/18 48/18 50/11 53/9 53/10 53/24 62/11 71/20 73/5 85/4 85/14 85/22 87/1 88/2 88/19 90/22 93/24 96/19 99/7 99/10 102/8 108/25 109/7 113/22 116/1 117/6 117/8 118/14 120/11 124/13 125/21 128/7 128/9 129/18 134/1 134/2 134/18 137/13 137/13 138/7 141/20 143/9 146/18 146/20 146/21 155/6 <b>they've [3]</b> 29/10 83/13 109/8 <b>thing [26]</b> 7/20 39/18 41/10 46/8 55/6 60/9 69/3 77/9 80/16 82/8 82/10 84/6 85/6 87/13 87/23 93/15 94/9 108/9 112/25 117/7 131/1 134/13 137/9 151/18 151/23 155/10 <b>things [44]</b> 5/24 6/11 6/17 7/7 17/18 20/7 22/11 23/23 24/23 25/17 27/9 28/5 31/14 34/4 34/11 35/4 36/3 36/10 39/22 40/2 41/3 42/20 55/25	64/20 69/7 77/3 78/18 79/22 80/9 82/6 94/2 94/12 95/18 112/10 117/19 117/22 117/24 122/13 123/13 124/14 133/24 137/11 143/24 145/3 <b>think [149]</b> 5/24 6/4 6/4 6/9 6/10 6/23 8/11 9/2 9/13 11/16 11/16 12/8 12/13 13/7 15/14 20/18 23/10 28/9 28/18 33/9 37/3 37/5 37/25 38/7 38/12 38/13 39/2 39/7 40/3 41/9 42/10 42/13 43/15 45/15 47/17 47/25 48/4 48/23 49/22 50/17 50/19 50/21 51/6 51/16 51/19 52/6 52/14 53/3 53/16 53/24 54/1 54/7 55/7 55/7 55/11 55/19 55/20 56/14 56/16 56/20 56/23 57/20 57/20 58/9 58/19 59/1 60/3 60/13 63/5 63/6 63/21 64/2 66/15 66/15 66/25 67/1 67/3 67/9 67/14 67/15 67/24 69/14 70/13 70/25 72/19 73/3 78/15 84/7 85/15 85/15 86/21 87/15 88/16 89/25 91/2 91/2 92/6 93/17 93/20 95/16 95/25 100/14 102/4 102/9 105/11 110/21 114/1 114/19 114/24 117/17 117/18 117/22 118/24 119/9 120/10 120/24 122/3 122/7 122/20 122/20 122/23 123/3 123/8 124/18 124/21 128/6 128/18 129/13 132/24 134/25 135/5 136/19 136/23 138/6 140/6 142/2	142/13 144/2 147/9 148/10 149/8 149/19 150/15 150/17 151/1 151/13 152/17 153/1 155/8 <b>thinking [1]</b> 99/20 <b>third [13]</b> 17/9 33/15 33/18 77/4 77/7 86/3 86/4 98/10 116/24 127/18 140/23 145/13 145/13 <b>third-party [1]</b> 98/10 <b>this [273]</b> <b>those [56]</b> 9/11 17/22 23/21 26/18 27/9 28/1 28/4 29/9 35/4 39/25 40/6 40/8 41/3 42/12 42/24 43/1 46/22 48/21 51/23 52/3 52/25 53/1 54/12 54/12 55/24 60/4 60/13 61/15 61/23 63/25 64/25 69/13 69/20 73/16 77/8 80/14 85/4 85/13 93/6 97/20 105/19 105/19 106/17 111/22 112/7 112/16 116/12 116/18 119/10 141/4 143/24 144/1 144/17 145/7 145/13 148/9 <b>though [7]</b> 36/11 38/7 53/4 56/8 83/3 100/22 102/7 <b>thought [7]</b> 32/1 34/4 45/4 48/3 63/2 117/15 147/11 <b>thoughts [7]</b> 45/3 45/10 48/21 51/23 52/9 63/25 113/25 <b>thousand [2]</b> 117/1 118/10 <b>thousands [4]</b> 25/25 113/17 134/17 134/17 <b>three [18]</b> 74/25 75/19 79/6 82/11 85/2 104/1 105/3 127/20 127/21 129/22 129/25 131/5 138/25 146/17 146/18
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(27) then... - three

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<p><b>T</b>  <b>three... [3]</b> 146/19  146/20 146/25  <b>threw [2]</b> 94/15  94/16  <b>through [35]</b>  21/13 25/21 27/5  27/18 28/5 30/12  34/18 39/13 39/13  40/6 42/22 45/21  47/23 57/24 66/16  74/23 76/4 77/15  80/20 82/24 86/13  86/21 112/25  128/13 128/13  129/7 129/18  135/21 140/15  143/12 150/16  151/9 152/25  153/23 156/10  <b>throughout [2]</b>  148/11 148/19  <b>throw [2]</b> 41/19  52/10  <b>throwing [1]</b>  119/10  <b>thrown [1]</b> 57/1  <b>thus [3]</b> 69/14 87/2  106/4  <b>tie [2]</b> 46/8 138/24  <b>ties [1]</b> 15/17  <b>time [96]</b> 4/20 5/1  5/13 6/10 6/14 6/21  7/9 7/20 8/3 8/4  10/20 12/7 13/6  13/7 14/13 14/18  15/1 20/3 20/13  20/17 21/7 21/14  21/24 22/4 22/7  23/4 24/4 24/4  25/22 29/21 31/2  31/20 31/24 32/5  32/23 34/12 35/15  39/6 39/8 41/6 43/4  43/21 47/6 48/1  49/14 51/15 61/16  62/5 65/3 65/6  65/11 66/3 66/5  66/12 66/16 67/15  68/25 72/4 73/1  73/16 79/3 81/25  82/1 82/5 82/19  83/5 83/22 87/22  91/9 93/1 96/24  96/25 100/3 100/25  108/1 108/10  108/17 111/7  111/10 115/15</p>	<p>118/7 118/8 118/16  118/17 124/25  134/5 134/8 136/18  139/9 139/20  141/24 142/1 147/3  147/24 155/25  157/7  <b>timely [1]</b> 87/20  <b>times [3]</b> 52/12  69/22 117/14  <b>timing [2]</b> 7/21  87/19  <b>TIMOTHY [1]</b> 1/18  <b>today [27]</b> 6/8  13/8 13/25 15/11  15/21 16/24 17/7  19/21 23/25 24/2  24/20 28/14 34/2  40/6 59/11 60/12  64/5 93/8 116/2  117/8 118/25 122/1  124/4 125/13  144/24 152/12  155/25  <b>together [16]</b> 12/8  15/17 25/24 30/21  43/2 53/1 53/7 60/4  60/5 61/15 65/7  80/10 100/13 102/1  136/14 146/18  <b>told [3]</b> 63/4  125/21 139/14  <b>tomorrow [1]</b>  34/12  <b>too [18]</b> 12/2 12/4  15/10 26/17 28/12  29/13 53/25 62/22  75/17 77/5 84/12  99/7 114/18 119/2  124/23 129/16  146/15 151/2  <b>took [5]</b> 39/19  39/22 118/20  136/17 157/5  <b>top [16]</b> 23/13  42/10 127/22  128/15 128/19  128/21 128/22  135/6 145/9 145/17  146/3 147/15 149/6  150/15 150/18  150/24  <b>topic [1]</b> 89/19  <b>topics [1]</b> 85/13  <b>tort [2]</b> 115/4  150/18  <b>toughest [1]</b>  112/20</p>	<p><b>track [1]</b> 111/22  <b>trade [2]</b> 83/12  83/13  <b>traditional [2]</b>  20/8 114/23  <b>transactional [2]</b>  119/21 119/25  <b>TRANSCRIBED [1]</b>  157/8  <b>transcript [3]</b> 1/15  103/16 157/10  <b>transferring [1]</b>  113/1  <b>transfers [1]</b>  112/13  <b>trial [49]</b> 8/18 9/20  9/23 10/10 12/10  14/9 27/10 28/25  29/6 29/7 29/11  29/23 34/1 34/5  34/7 34/7 35/2 35/5  37/6 37/17 38/3  41/13 42/22 45/6  48/10 50/2 50/3  50/14 51/3 51/12  52/2 52/5 52/13  53/22 58/12 59/7  60/14 62/20 63/17  64/9 64/15 65/21  66/6 66/13 72/24  72/25 119/8 124/20  152/22  <b>trials [2]</b> 27/8  46/22  <b>tried [12]</b> 30/20  30/21 36/11 38/1  39/6 41/6 41/7  43/18 48/18 53/1  53/10 58/13  <b>tries [1]</b> 41/9  <b>trouble [1]</b> 57/21  <b>true [6]</b> 96/21  96/22 107/6 119/6  140/5 157/10  <b>truly [4]</b> 12/6 35/2  96/3 124/11  <b>trust [4]</b> 4/21  13/23 94/14 139/3  <b>truth [1]</b> 94/6  <b>try [18]</b> 10/20  27/16 36/12 39/9  41/4 41/17 41/25  43/10 43/22 53/5  56/20 59/15 96/1  97/4 117/2 129/14  139/5 152/13  <b>trying [13]</b> 11/12  12/5 42/10 46/8</p>	<p>77/20 78/2 84/24  87/1 111/22 131/19  135/3 141/6 146/21  <b>Tuesday [3]</b> 8/6  8/8 8/9  <b>turn [1]</b> 152/14  <b>turnaround [1]</b>  153/2  <b>turns [2]</b> 27/14  39/16  <b>tweaked [1]</b> 144/5  <b>twice [1]</b> 66/24  <b>two [39]</b> 5/6 5/6  5/10 9/9 11/13  14/25 18/23 20/9  21/9 21/24 24/18  25/4 25/5 27/8  34/15 36/2 36/10  39/13 40/24 46/9  46/21 46/21 46/22  66/8 71/10 71/11  74/2 74/2 86/8 93/2  96/17 117/7 123/12  130/3 144/17  144/19 148/19  149/22 150/8  <b>type [13]</b> 10/11  20/7 70/7 76/20  89/15 122/11  122/11 130/25  131/1 141/11  146/12 147/22  153/9  <b>types [4]</b> 35/4 46/9  46/21 55/24  <b>TYPEWRITING [1]</b>  157/8  <b>typical [3]</b> 20/7  51/17 114/2  <b>typically [7]</b> 6/17  38/17 51/19 59/18  122/11 137/25  138/3  <b>typo [1]</b> 128/3  <b>typos [3]</b> 149/10  153/18 154/17</p>	<p><b>unclean [1]</b> 33/17  <b>unconscionability [1]</b> 51/18  <b>uncontrollably [1]</b>  76/14  <b>under [15]</b> 51/12  52/3 52/21 62/15  64/22 70/5 76/12  78/24 84/12 84/18  87/19 132/3 137/16  150/15 157/9  <b>underfunded [1]</b>  109/20  <b>underlying [1]</b>  25/12  <b>undermine [1]</b>  97/12  <b>understand [40]</b>  10/14 10/15 11/10  12/4 12/16 24/12  27/24 29/1 34/1  38/16 39/9 53/1  54/9 55/17 56/20  56/23 57/13 58/7  63/21 64/17 65/10  66/7 69/1 69/25  70/8 108/19 109/12  109/14 116/11  124/3 135/14  138/10 139/17  148/8 149/18  149/25 151/3  151/10 152/17  155/14  <b>understanding [13]</b> 5/1 11/8  13/14 24/3 68/1  68/7 73/23 81/4  101/12 128/16  128/18 135/18  149/2  <b>understands [3]</b>  34/17 52/14 62/4  <b>understood [4]</b>  30/2 58/17 141/14  152/6  <b>unfair [1]</b> 117/18  <b>unique [5]</b> 11/20  11/21 11/21 51/11  51/13  <b>United [2]</b> 51/7  51/16  <b>universe [1]</b> 133/4  <b>unknown [1]</b>  113/18  <b>unless [6]</b> 15/21  29/17 32/3 52/19  79/4 105/20</p>
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(28) three... - unless

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<p><b>U</b>  <b>unlike [1]</b> 142/19  <b>unmanageable [1]</b> 77/6  <b>unnecessary [1]</b> 124/24  <b>unopposed [1]</b> 13/4  <b>unrelated [2]</b> 25/6 48/18  <b>until [9]</b> 9/19 9/24 13/5 16/9 34/10 35/7 39/24 57/15 102/1  <b>up [47]</b> 4/24 6/25 9/21 14/17 16/6 16/7 20/4 20/11 22/15 26/14 30/2 31/14 31/15 32/3 33/6 33/13 33/19 34/6 43/4 43/14 43/17 44/17 52/21 54/18 56/12 56/13 60/14 61/8 64/23 78/8 85/10 93/16 96/23 107/11 111/15 111/16 115/14 117/22 118/21 124/10 130/5 138/24 145/22 148/14 153/10 153/24 154/17  <b>upon [14]</b> 22/22 37/9 45/6 56/24 92/7 115/5 131/2 135/8 138/1 142/21 143/1 151/14 155/15 156/9  <b>us [18]</b> 10/20 14/2 29/24 32/4 37/6 40/18 47/20 65/4 66/3 74/23 102/22 103/13 105/6 109/1 112/15 113/9 116/24 146/10  <b>USCIS [7]</b> 83/14 83/20 83/21 83/24 83/25 86/12 86/21  <b>use [13]</b> 15/6 75/7 78/18 79/25 94/4 97/5 97/6 97/17 117/23 128/10 134/2 136/15 137/4  <b>used [11]</b> 23/3 106/24 107/19 112/12 112/22 115/12 128/23</p>	<p>130/14 135/8 135/19 151/14  <b>using [1]</b> 136/13  <b>utilize [1]</b> 84/2  <b>V</b>  <b>vacation [1]</b> 88/19  <b>valid [2]</b> 136/10 142/17  <b>value [3]</b> 78/5 87/12 92/22  <b>various [1]</b> 75/10  <b>vast [2]</b> 93/23 148/15  <b>VEGAS [22]</b> 1/12 3/9 4/1 19/2 19/17 19/22 25/11 25/18 31/8 31/21 32/16 32/18 39/18 76/2 76/25 81/8 82/17 93/9 106/14 107/24 110/13 112/23  <b>vehicle [1]</b> 98/4  <b>vendors [1]</b> 113/18  <b>verify [1]</b> 112/18  <b>versus [4]</b> 30/17 47/20 48/17 154/25  <b>vertical [1]</b> 22/9  <b>very [54]</b> 11/20 11/21 11/25 14/5 18/21 19/15 19/15 21/24 21/25 33/4 33/4 34/14 34/24 35/7 38/2 38/10 40/23 41/21 62/11 77/17 77/21 78/9 78/9 85/14 86/14 86/14 88/12 88/16 88/16 90/6 90/6 90/10 90/10 92/24 97/8 97/16 106/18 107/13 109/16 119/21 120/1 120/11 124/16 125/20 130/11 130/11 131/12 131/13 131/13 132/22 132/22 137/19 144/12 153/11  <b>vet [1]</b> 52/19  <b>vetted [1]</b> 34/9  <b>VIA [1]</b> 2/15  <b>viable [1]</b> 38/23  <b>VICE [1]</b> 2/12  <b>video [1]</b> 132/7  <b>Viet [1]</b> 80/14  <b>visit [1]</b> 70/12  <b>void [2]</b> 27/14 54/7</p>	<p><b>voidable [1]</b> 54/7  <b>voir [1]</b> 34/15  <b>W</b>  <b>Wait [1]</b> 115/8  <b>waiting [2]</b> 40/17 72/11  <b>waive [1]</b> 33/22  <b>waived [5]</b> 19/9 29/11 29/12 38/5 50/15  <b>waiver [12]</b> 29/5 29/11 33/25 42/9 45/7 48/9 50/14 50/21 51/3 51/11 52/6 53/21  <b>waiving [1]</b> 155/20  <b>walk [4]</b> 20/25 128/13 128/13 129/7  <b>walked [4]</b> 27/5 27/18 28/5 30/11  <b>want [68]</b> 5/7 5/7 5/8 5/15 5/25 5/25 6/3 10/3 10/13 10/18 11/7 13/13 14/3 16/11 28/6 34/16 34/21 45/12 52/23 56/10 58/6 59/7 59/11 59/13 61/18 69/12 69/23 73/23 85/6 85/21 90/13 93/18 95/19 100/8 101/1 102/11 103/17 112/12 113/12 113/13 115/15 121/19 122/13 123/2 123/7 123/18 123/22 124/24 140/8 140/15 141/23 145/24 148/23 149/6 149/12 149/21 150/12 150/13 151/4 151/6 151/7 151/9 151/24 152/19 153/20 154/3 154/22 155/19  <b>wanted [9]</b> 4/17 60/10 60/12 63/8 94/3 115/6 120/23 141/18 154/19  <b>wanting [1]</b> 141/14  <b>wants [6]</b> 27/10 54/19 59/15 84/1 96/2 129/7  <b>was [166]</b></p>	<p><b>wasn't [7]</b> 7/3 37/23 44/14 46/11 124/19 136/16 138/17  <b>waste [2]</b> 27/4 141/23  <b>water [1]</b> 17/2  <b>way [41]</b> 6/23 7/4 12/14 13/1 13/8 14/3 14/3 20/16 22/23 39/22 40/25 45/21 47/15 48/4 48/23 57/17 66/4 67/2 75/16 76/6 77/5 77/5 84/14 84/20 86/6 86/13 87/15 95/4 102/4 102/21 104/6 106/15 109/4 125/11 129/16 134/4 136/23 139/4 152/13 154/15 154/19  <b>ways [2]</b> 102/16 108/20  <b>we [335]</b>  <b>we'd [3]</b> 9/5 12/23 94/22  <b>we'll [41]</b> 8/18 10/8 10/9 10/21 12/25 13/12 13/22 13/23 13/24 13/24 14/7 14/23 15/2 15/2 15/3 15/6 15/6 16/16 18/7 24/24 34/13 72/10 72/25 73/13 74/13 74/13 74/15 84/4 99/8 100/24 101/25 104/22 113/22 119/7 127/2 152/1 152/19 154/1 154/15 154/17 154/20  <b>we're [82]</b> 7/19 8/13 11/12 11/21 14/9 16/4 18/11 20/22 22/6 22/7 26/14 31/25 32/1 32/3 34/6 34/12 37/15 40/13 40/22 41/24 43/17 47/20 49/1 55/19 57/25 58/10 58/12 59/14 60/3 60/4 61/12 64/2 64/8 64/13 66/2 66/20 69/4 70/8 71/9 71/13</p>	<p>80/17 81/14 82/5 83/9 84/2 84/10 84/21 84/24 85/5 91/25 92/1 93/8 94/5 94/17 96/18 98/11 104/1 104/8 104/11 105/4 111/22 112/10 113/15 121/16 121/24 121/25 125/7 125/12 125/13 125/18 126/6 126/14 127/16 131/19 133/5 135/15 138/23 140/21 145/20 150/5 152/21 153/25  <b>we've [26]</b> 12/10 17/10 18/21 19/19 24/24 25/16 33/16 36/11 52/12 64/24 71/22 77/20 79/19 84/22 84/24 85/2 104/19 105/14 105/14 109/1 110/16 110/20 113/19 126/3 127/23 132/11  <b>WEDNESDAY [3]</b> 1/21 4/1 152/12  <b>week [3]</b> 8/16 11/14 150/8  <b>weeks [6]</b> 5/16 65/1 71/10 71/11 72/10 117/7  <b>well [47]</b> 5/21 6/16 7/5 7/11 8/9 9/17 22/19 25/23 26/1 26/15 29/24 30/6 37/10 38/14 39/11 39/21 39/25 46/3 46/18 54/21 55/5 55/5 68/9 72/6 74/2 77/17 80/25 85/9 88/2 88/18 89/25 91/6 95/14 96/11 99/7 101/1 101/8 109/10 109/19 110/2 110/5 112/7 136/21 139/18 140/21 141/25 144/4  <b>Wells [9]</b> 105/12 105/21 106/2 107/7 112/14 112/17 113/16 113/21 123/17</p>
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(29) unlike - Wells

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<p><b>W</b>  <b>went [16]</b> 5/16                  21/13 28/3 46/16                  80/11 80/20 106/21                  106/24 111/23                  113/19 115/24                  120/23 121/2                  121/19 122/14                  144/20  <b>were [49]</b> 21/3                  21/17 21/18 23/11                  31/12 32/2 32/7                  32/8 32/10 32/10                  32/11 32/24 32/24                  37/8 37/20 39/22                  42/19 42/20 50/7                  72/13 83/1 83/3                  87/10 91/22 93/21                  95/2 105/10 106/13                  106/14 106/15                  106/15 108/17                  109/20 112/13                  117/3 118/14                  119/19 119/20                  120/19 122/8                  131/24 133/9                  142/25 143/22                  146/11 147/5 149/2                  156/20 157/8  <b>weren't [5]</b> 32/8                  77/18 80/10 85/11                  139/2  <b>west [18]</b> 63/9                  75/2 75/5 75/25                  76/3 76/4 76/21                  80/8 80/20 82/12                  85/4 89/2 89/5                  89/11 89/13 91/22                  102/25 104/2  <b>what [168]</b>  <b>what's [16]</b> 33/23                  39/9 41/8 42/7                  42/12 46/3 51/13                  59/16 59/23 69/24                  87/6 89/7 89/22                  95/22 119/12 138/8  <b>whatever [20]</b>                  10/25 27/14 34/8                  42/13 42/21 57/16                  70/7 98/7 99/23                  101/16 109/16                  109/20 113/1                  113/23 117/14                  142/1 144/25 145/1                  153/10 155/18  <b>wheel [1]</b> 14/16  <b>when [54]</b> 5/14                  5/16 7/8 7/11 7/12</p>	<p>9/19 9/20 13/4                  18/17 21/21 26/6                  29/7 35/4 35/7 35/9                  36/4 36/4 40/15                  43/6 46/17 47/8                  52/11 55/2 56/23                  57/21 57/22 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          139/16 145/6 154/7  <b>whereas [2]</b> 19/14                  38/9  <b>WHEREOF [1]</b>                  157/13  <b>whether [33]</b> 29/3                  34/7 42/21 44/5                  44/12 52/4 52/5                  52/20 55/12 56/2                  62/19 68/6 68/10                  82/7 84/16 84/16                  88/9 99/18 109/2                  111/21 112/4 123/4                  128/9 130/16                  130/22 132/20                  136/13 136/13                  138/4 138/5 142/16                  148/17 148/18  <b>which [42]</b> 7/25                  8/2 9/23 10/21</p>	<p>15/22 22/23 22/25                  36/4 36/18 38/5                  39/18 41/16 45/17                  46/15 47/9 47/13                  64/22 65/25 76/3                  80/10 82/1 89/5                  89/13 93/3 93/7                  106/12 108/6                  110/15 110/15                  110/16 119/11                  119/24 126/18                  127/10 128/3                  128/25 130/5                  143/23 146/14                  148/19 151/13                  151/20  <b>whichever [1]</b>                  58/20  <b>while [1]</b> 25/13  <b>who [11]</b> 33/13                  43/10 78/6 80/23                  86/15 88/11 95/12                  110/20 137/17                  148/12 155/21  <b>who's [4]</b> 28/4                  73/15 121/12                  150/17  <b>whoever [1]</b> 153/9  <b>whole [13]</b> 7/20                  34/18 41/9 46/8                  49/14 56/17 63/5                  87/6 87/23 97/1                  113/17 116/13                  116/18  <b>whose [1]</b> 110/14  <b>why [51]</b> 4/24 6/7                  8/15 8/23 11/17                  13/1 23/7 28/20                  34/17 37/5 37/21                  40/14 41/16 43/3                  43/17 44/2 48/6                  52/10 52/13 52/18                  53/17 57/12 62/1                  63/21 65/10 67/24                  81/21 83/11 86/9                  86/10 87/7 87/7         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<b>WILLIAMS [1]</b>                  1/18  <b>willing [3]</b> 97/8                  113/15 142/9  <b>win [3]</b> 65/2 110/3                  110/5  <b>wind [1]</b> 14/17  <b>winding [1]</b> 20/11  <b>winds [1]</b> 44/17  <b>wish [1]</b> 103/13  <b>wishes [1]</b> 88/18  <b>withdraw [2]</b>                  33/22 83/17  <b>within [5]</b> 62/10                  73/8 73/9 79/12                  150/9  <b>without [14]</b> 6/12                  52/16 53/19 53/22                  58/6 68/22 88/10                  99/25 108/21 124/4                  126/3 140/14                  143/17 144/9  <b>WITNESS [1]</b>                  157/13  <b>witnesses [2]</b>                  73/15 73/16  <b>won't [8]</b> 9/19                  15/23 26/17 30/12                  51/3 98/1 125/1                  136/23  <b>wondering [2]</b>                  99/23 114/23  <b>word [6]</b> 94/17                  138/14 138/15                  153/7 153/14                  153/16  <b>work [21]</b> 9/8                  15/20 40/1 47/15</p>	<p>71/8 78/14 84/21                  92/13 95/14 102/22                  119/7 130/6 131/22                  131/22 131/23                  133/3 133/4 138/4                  140/2 147/7 154/15  <b>worked [2]</b> 88/7                  96/3  <b>working [5]</b> 83/3                  96/20 125/18                  125/22 147/6  <b>works [4]</b> 10/15                  48/24 129/13                  137/16  <b>world [1]</b> 97/7  <b>worried [1]</b> 70/1  <b>worry [3]</b> 9/24                  69/17 69/20  <b>worthless [1]</b> 23/9  <b>would [120]</b> 5/18                  6/16 6/24 8/8 9/16                  11/4 11/17 14/12                  14/19 14/20 15/20                  16/3 16/5 21/22                  23/12 27/13 29/8                  33/18 36/21 37/3                  37/25 39/5 39/8                  41/23 41/23 41/24                  42/12 42/14 42/14                  42/22 42/22 43/1                  44/23 44/24 45/5                  45/17 48/14 48/20              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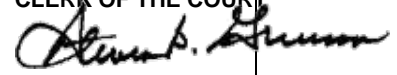
Peggy Isom, CCR 541, RMR

(30) went - would

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<p><b>W</b> <b>would... [5]</b> 144/24 146/14 149/11 153/2 154/4 <b>wouldn't [5]</b> 65/10 98/20 113/12 144/23 153/10 <b>writing [1]</b> 119/5 <b>wrong [8]</b> 57/25 63/7 89/7 90/1 135/11 137/10 138/9 139/11 <b>wrote [2]</b> 96/4 139/12</p>	<p>119/4 119/14 124/12 125/3 125/9 126/1 127/8 127/13 127/19 133/19 141/1 152/9 156/1 <b>yet [10]</b> 5/2 7/9 25/25 33/8 58/15 68/16 81/7 84/7 94/4 155/4 <b>you [330]</b> <b>you'll [2]</b> 148/10 156/13 <b>you're [29]</b> 6/25 14/2 14/17 17/2 27/19 27/20 43/7 55/10 56/17 57/25 71/18 72/23 72/24 72/25 97/6 97/19 110/21 110/22 110/23 135/2 137/10 138/4 138/17 141/9 151/2 151/10 151/12 155/20 156/8 <b>you've [2]</b> 35/8 68/1 <b>your [143]</b> 4/7 4/10 4/12 4/19 6/20 7/19 8/18 8/22 11/13 13/16 15/9 16/3 16/9 16/21 18/14 18/18 18/20 19/8 19/21 21/2 23/19 24/5 28/14 29/20 31/1 31/6 35/6 35/18 36/3 36/16 38/4 39/9 40/20 41/23 42/21 44/1 44/4 44/10 44/10 44/11 44/11 44/13 44/16 44/18 45/18 46/23 47/4 47/5 47/25 47/25 53/21 54/5 54/18 55/1 55/11 55/21 59/23 66/17 66/23 67/3 68/20 69/12 70/25 73/19 74/21 74/23 75/5 79/4 79/4 79/8 87/15 89/14 90/4 90/5 90/23 91/10 92/15 93/14 93/15 94/4 94/14 94/20 95/6 97/5 97/9 98/19 100/13 102/17 102/21 105/7 105/10 105/14</p>	<p>106/8 107/9 109/12 114/15 117/17 119/7 119/17 120/21 123/10 123/25 125/3 125/18 125/25 127/14 127/16 129/20 129/22 132/24 134/12 135/4 135/19 135/19 135/25 136/24 137/25 138/6 138/22 139/24 140/11 140/14 140/18 140/19 141/14 142/5 142/14 146/8 147/8 147/24 148/11 148/25 149/5 149/21 149/25 152/7 155/2 155/14 155/20 155/24 155/25 156/3 156/4</p>		
<p><b>X</b> <b>XVI [1]</b> 1/3</p>				
<p><b>Y</b> <b>yeah [42]</b> 7/13 9/17 10/7 12/9 12/17 12/22 13/21 16/14 17/13 18/6 30/4 55/25 57/12 60/1 60/7 61/7 64/19 68/4 68/23 69/19 89/9 100/10 100/24 101/3 101/9 104/13 104/17 105/3 109/13 124/6 133/9 135/17 135/23 144/17 147/5 149/15 150/2 150/18 152/3 153/15 154/2 156/16 <b>year [5]</b> 10/24 59/8 72/9 83/9 133/7 <b>years [4]</b> 29/22 40/10 51/9 96/18 <b>yes [60]</b> 10/17 11/2 11/6 15/22 16/21 17/19 18/5 18/13 18/14 18/18 18/19 30/9 31/6 35/22 38/22 38/24 39/1 45/9 45/11 53/12 54/8 56/5 57/9 57/19 58/3 59/6 60/3 60/20 61/5 62/25 70/23 73/4 73/19 74/21 91/11 92/3 92/12 103/6 103/11 103/12 103/15 104/20 104/23 104/23 111/1 115/18 115/18</p>		<p><b>Z</b> <b>zero [1]</b> 99/18</p>		

Peggy Isom, CCR 541, RMR (31) would... - zero  
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**RPLY**  
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*Attorneys for Plaintiff*

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

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

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

vs.

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

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

AND ALL RELATED COUNTERCLAIMS.

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

///  
///  
///

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

4 DATED this 18<sup>th</sup> day of October, 2019.

5 **ALDRICH LAW FIRM, LTD.**

6 /s/ John P. Aldrich  
7 John P. Aldrich, Esq.  
8 Nevada Bar No. 6877  
9 Catherine Hernandez, Esq.  
10 Nevada Bar No. 8410  
11 Matthew B. Beckstead, Esq.  
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13 7866 West Sahara Avenue  
14 Las Vegas, Nevada 89117  
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16 Facsimile: (702) 227-1975  
17 *Attorneys for Plaintiff/Counterdefendants*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

21 In the Motion, Plaintiff:

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

Plaintiff then requests the following relief:

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

1 The Motion then continues:

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

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

13 Defendants assert:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

The name and location of the hotel.

1 The dates you stayed there.

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

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

5 The name and location of the restaurant.

6 The number of people served.

7 The date and amount of the expense.

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

10 Canceled check.

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

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

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

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

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

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

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

(Exhibit 4, p. 6.)

Finally, Mr. Winters provided the following opinion:

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

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

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

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

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

23 **REQUEST NO. 97:**

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

**RESPONSE TO REQUEST NO. 97:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 *Danis* at \*116-17.

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

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

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

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

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

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

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

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

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

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

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

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

23    ///

24    ///

1  
2  
3 **III.**

4 **CONCLUSION**

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

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

15 DATED this 18<sup>th</sup> day of October, 2019.

16 **ALDRICH LAW FIRM, LTD.**

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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 18<sup>th</sup> day of October, 2019, I caused the foregoing  
3 **PLAINTIFF'S REPLY TO OPPOSITION TO MOTION FOR SANCTIONS** to be  
4 electronically filed and served with the Clerk of the Court using Wiznet which will send  
5 notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or  
6 by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the  
7 following parties:

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