

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 04:36 p.m.
Dist. Ct. Case No: A-18-781084-B Elizabeth A. Brown
Clerk of Supreme Court

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**PETITION FOR WRIT OF MANDAMUS, OR ALTERNATIVELY,
PROHIBITION**

**PETITIONER'S APPENDIX
VOLUME XIII**

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CHRONOLOGICAL INDEX

VOLUME I

PAGES

Complaint (09/14/2018)	0001-0028
Amended Complaint (10/04/2018)	0029-0057
Affidavit of Service on Robert W. Dziubla (10/17/2018)	0058
Affidavit of Service on Linda Stanwood (10/17/2018)	0059
Affidavit of Service on EB5 Impact Advisors LLC (10/17/2018)	0060
Affidavit of Service on EB5 Impact Capital Regional Center LLC (10/18/2018)	0061
Affidavit of Service on Las Vegas Development Fund LLC (10/18/2018)	0062
Affidavit of Service on Chicago Title Company (10/22/2018)	0063
Notice of Entry of Order Admitting to Practice (11/15/2018)	0064-0068
Notice of Entry of Order on Plaintiff's Petition for Appointment of Receiver and for an Accounting (11/27/2018)	0069-0074
Notice of Entry of Order Granting Plaintiff's Motion for Protective Order (11/27/2018)	0075-0079
Notice of Entry of Protective Order (11/27/2018)	0080-0098
Notice of Entry of Order Granting Temporary Restraining Order and Expunging Notice of Default (11/27/2018)	0099-0104
Order Setting Settlement Conference (12/06/2018)	0105-0106
Second Amended Complaint (01/04/2019)	0107-0250

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

VOLUME II

PAGES

Second Amended Complaint (01/04/2019) (<i>cont'd</i>)	0251-0322
Notice of Entry of Order on Plaintiff's Motion for Preliminary Injunction (01/17/2019)	0323-0327
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)	0328-0332
Notice of Entry of Order on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint (01/17/2019)	0333-0337
Notice of Entry of Order on Plaintiff's Motion to Disqualify C. Keith Greer as Attorney of Record for Defendants (01/25/2019)	0338-0343
Notice of Entry of Disclaimer of Interest of Chicago Title Company and Stipulation and Order for Dismissal (02/05/2019)	0344-0350
Defendant Las Vegas Development Fund LLC's Motion for Appointment of Receiver and Request for Order Shortening Time (02/06/2019)	0351-0378
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)	0379-0500

VOLUME III

PAGES

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) (<i>cont'd</i>)	0501-0558
Declaration of C. Keith Greer in Support of Defendant's Motion for Receivership (02/06/2019)	0559-0601

1	Motion to Seal and/or Redact Pleadings and Exhibits to Protect	0602-0628
2	Confidential Information, Motion to Amend Paragraph 2.3 of	
3	Protective Order, Motion for Order Shortening Time and Order	
4	Shortening Time (02/15/2019)	
5	Notice of Entry of Order Shortening Time (02/15/2019)	0629-0658
6	Opposition Memorandum of Defendant Las Vegas	0659-0669
7	Development Fund, LLC to Plaintiff's Motion to Seal and/or	
8	Redact Pleadings and Exhibits (02/19/2019)	
9	Opposition to Defendant Las Vegas Development Fund LLC's	0670-0730
10	Motion for Appointment of Receiver (02/22/2019)	
11	Errata to Opposition to Defendant Las Vegas Development	0731-0740
12	Fund LLC's Motion for Appointment of Receiver (02/22/2019)	
13	Defendant Las Vegas Development Fund LLC's Reply to	0741-0750
14	Plaintiff's Opposition to Defendant's Motion for Appointment of	
15	Receiver (02/26/2019)	
16	<u>VOLUME IV</u>	<u>PAGES</u>
17	Defendant Las Vegas Development Fund LLC's Reply to	0751-0755
18	Plaintiff's Opposition to Defendant's Motion for Appointment of	
19	Receiver (02/26/2019) (<i>cont'd</i>)	
20	Supplemental Declaration of Robert W. Dziubla in Support of	0756-0761
21	Defendant LVD Fund's Reply to Plaintiff's Opposition to	
22	Defendant's Motion to Appointment of Receiver (02/26/2019)	
23	Declaration of C. Keith Greer in Support of Defendant LVD	0762-0769
24	Fund's Reply to Plaintiff's Opposition to Defendant's Motion to	
25	Appoint Receiver (02/26/2019)	
26	Plaintiff's Second Motion for Temporary Restraining Order and	0770-0836
27	Preliminary Injunction, Motion for Order Shortening Time, and	
28	Order Shortening Time (03/01/19)	

1	Defendant Las Vegas Development Fund, LLC’s Opposition to	0837-0860
2	Plaintiff’s Second Motion for Temporary Restraining Order and	
3	Preliminary Injunction (03/19/2019)	
4	Supplemental Declaration of Defendant Robert Dziubla in	0861-0875
5	Support of Defendant Las Vegas Development Fund, LLC’s	
6	Opposition to Plaintiff’s Second Motion for Temporary	
7	Restraining Order and Preliminary Injunction (03/19/2019)	
8	Notice of Entry of Order (03/19/2019)	0876-0881
9	Errata to Supplemental Declaration of Robert Dziubla in	0882-0892
10	Support of Defendants’ Opposition to Plaintiff’s Second Motion	
11	for Temporary Restraining Order and Preliminary Injunction	
12	(03/20/2019)	
13	Notice of Entry of Order (04/10/2019)	0893-0897
14	Notice of Entry of Order (04/10/2019)	0898-0903
15	Notice of Entry of Order (04/10/2019)	0904-0909
16	Notice of Entry of Order (04/10/2019)	0910-0916
17	Defendants’ Answer to Plaintiff’s Second Amended Complaint	0917-1000
18	and Counterclaim (04/23/2019)	
19		
20	<u>VOLUME V</u>	<u>PAGES</u>
21		
22	Defendants’ Answer to Plaintiff’s Second Amended Complaint	1001-1083
23	and Counterclaim (04/23/2019) (<i>cont’d</i>)	
24	Notice of Entry of Order (05/16/2019)	1084-1089
25	Reporter’s Transcript of Motion (Preliminary Injunction	1090-1250
26	Hearing) (06/03/2019)	
27		
28		

VOLUME VI

PAGES

Reporter’s Transcript of Motion (Preliminary Injunction Hearing) (06/03/2019) (*cont’d*) 1251-1313

Order Setting Settlement Conference (06/04/2019) 1314-1315

Acceptance of Service of Counterclaim on Counterdefendants Front Sight Management, LLC, Ignatius Piazza, Jennifer Piazza, VNV Dynasty Trust I and VNV Dynasty Trust II (06/14/2019) 1316-1317

Notice of Entry of Order (06/25/2019) 1318-1324

Notice of Entry of Stipulation and Order Regarding Defendants’ Judicial Foreclosure Cause of Action (06/25/2019) 1325-1330

Reporter’s Transcript of Preliminary Injunction Hearing (07/22/2019) 1331-1500

VOLUME VII

PAGES

Reporter’s Transcript of Preliminary Injunction Hearing (07/22/2019) (*cont’d*) 1501-1513

Reporter’s Transcript of Preliminary Injunction (07/23/2019) 1514-1565

Business Court Order (07/23/2019) 1566-1572

Order Re Rule 16 Conference, Setting Civil Jury Trial, Pre-Trial/Calendar Call and Deadlines for Motions; Discovery Scheduling Order (08/20/2019) 1573-1577

Notice of Entry of Order Granting in Part and Denying in Part Counterdefendants’ Motions to Dismiss Counterclaim (09/13/2019) 1578-1584

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) 1585-1591

1	Notice of Entry of Order Staying All Subpoenas For Documents	1592-1599
2	and Depositions which were Served on Non-Parties by Plaintiff	
3	(09/13/2019)	
4	Plaintiff's Motion for Sanctions (09/17/2019)	1600-1643
5		
6	Reporter's Transcript of Hearing (Preliminary Injunction	1644-1750
7	Hearing) (09/20/2019)	
8	<u>VOLUME VIII</u>	<u>PAGES</u>
9	Reporter's Transcript of Hearing (Preliminary Injunction	1751-1930
10	Hearing) (09/20/2019) (<i>cont'd</i>)	
11	Order Scheduling Hearing (09/27/2019)	1931-1932
12		
13	Counterdefendants VNV Dynasty Trust I and VNV Dynasty	1933-1957
14	Trust II's Answer to Counterclaim (09/30/2019)	
15	Counterdefendant Dr. Ignatius Piazza's Answer to Counterclaim	1958-1981
16	(09/30/2019)	
17	Counterdefendant Front Sight Management LLC's Answer to	1982-2000
18	Counterclaim (09/30/2019)	
19	<u>VOLUME IX</u>	<u>PAGES</u>
20	Counterdefendant Front Sight Management LLC's Answer to	2001-2005
21	Counterclaim (09/30/2019) (<i>cont'd</i>)	
22	Counterdefendant Jennifer Piazza's Answer to Counterclaim	2006-2029
23	(09/30/2019)	
24		
25	Defendant EB5 Impact Advisors LLC's Opposition to	2030-2040
26	Plaintiff's Motion for Sanctions (09/30/2019)	
27	Declaration of Robert Dziubla in Opposition to Plaintiff's	2041-2044
28	Motion for Sanctions (09/30/2019)	

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

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) 2045-2232

Reply to Opposition to Plaintiff’s Motion for Sanctions (10/18/2019) 2233-2250

VOLUME X **PAGES**

Reply to Opposition to Plaintiff’s Motion for Sanctions (10/18/2019) (*cont’d*) 2251-2297

Notice of Intent to Issue Subpoena to Lucas Horsfall, LLP (10/22/2019) 2298-2378

Notice of Intent to Issue Subpoena to Bank of America, N.A. (10/22/2019) 2379-2459

Plaintiff’s Motion to Quash Subpoenas (10/29/2019) 2460-2478

Defendants’ Opposition to Plaintiff’s Motion to Quash Subpoenas to Third Parties Bank of America and Lucas Horsfall, Murphy & Pindroh, LLP (11/6/2019) 2479-2500

VOLUME XI **PAGES**

Defendants’ Opposition to Plaintiff’s Motion to Quash Subpoenas to Third Parties Bank of America and Lucas Horsfall, Murphy & Pindroh, LLP (11/6/2019) (*cont’d*) 2501-2655

Notice of Entry of Order Granting Defendants’ Motion to Advance Hearing regarding Plaintiff’s Motion to Quash Subpoenas (11/08/2019) 2656-2660

Reply to Opposition to Motion to Quash Subpoenas (11/15/2019) 2661-2750

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

VOLUME XII

PAGES

Reply to Opposition to Motion to Quash Subpoenas (11/15/2019) (<i>cont'd</i>)	2751-2776
Notice of Entry of Order Shortening Time (11/15/2019)	2777-2785
Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motions to Quash Plaintiff's Subpoenas to Non- Parties Emphyrean West, Jay Carter and David Keller (12/6/2019)	2786-2793
Notice of Entry of Order Granting Defendant's Motions to Quash Plaintiff's Subpoenas to Non-Party Banks (12/6/2019)	2794-2800
Notice of Entry of Stipulation and Order Regarding Exhibit (12/6/2019)	2801-2816
Notice of Entry of Order Denying Plaintiff's Motion to Quash Subpoenas to Plaintiff's Bank and Accountant (12/6/2019)	2817-2822
Notice of Entry of Order Shortening Time (12/11/2019)	2823-2836
Notice of Entry of Order (12/18/2019)	2837-2840
Notice of Entry of Stipulation and Order (12/18/2019)	2841-2846
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)	2847-2853
Notice of Entry of Order Denying Plaintiff's Motion for Sanctions Related to Defendant EB5IA's Accounting Records (12/19/2019)	2854-2860
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)	2861-2866

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

Notice of Entry of Order (01/17/2020) 2867-2874

Statement of Undisputed Facts (01/17/2020) 2875-3000

VOLUME XIII **PAGES**

Statement of Undisputed Facts (01/17/2020) (*cont'd*) 3001-3080

Notice of Entry of Findings of Fact, Conclusions of Law, and Order Denying Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary Restraining Order and to Appoint a Receiver (01/23/2020) 3081-3091

Notice of Entry of Order on Status Check Regarding Discovery Responses/Plaintiff's Motion to Compel (01/23/2020) 3092-3095

Motion for Summary Judgment as to the Counterclaims Against VNV Dynasty Trust I and VNV Dynasty Trust II (01/23/2020) 3096-3143

Motion for Summary Judgment as to the Counterclaims Against Jennifer Piazza (01/23/2020) 3144-3166

Defendant and Counter Claimant LVDF's Objections to Plaintiff and Counter Defendant's Statement of Undisputed Facts (02/03/2020) 3167-3222

Defendant and Counterclaimant LVD Fund's Opposition to Counterdefendant Jennifer Piazza's Motion for Summary Judgment [*redacted in district court filing*] (02/03/2020) 3223-3239

Defendant and Counterclaimant LVD Fund's Opposition to VNV Dynasty Trust I and VNV Dynasty Trust II's Motion for Summary Judgment [*redacted in district court filing*] (02/03/2020) 3240-3250

VOLUME XIV

PAGES

1		
2		
3	Defendant and Counterclaimant LVD Fund’s Opposition to	3251-3256
4	VNV Dynasty Trust I and VNV Dynasty Trust II’s Motion for	
5	Summary Judgment [<i>redacted in district court filing</i>]	
6	(02/03/2020) (<i>cont’d</i>)	
7		
8	Declaration of C. Keith Greer in Support of Defendant and	3257-3326
9	Counterclaimants’ Oppositions to Jennifer Piazza and the VNV	
10	Dynasty Trust I and II Motions for Summary Judgment	
11	(02/03/2020)	
12		
13	Notice of Entry of Order (02/07/2020)	3327-3330
14		
15	Motion to Seal and/or Redact Portions of Defendants’	3331-3348
16	Oppositions to Jennifer Piazza and the VNV Trusts’ Motions for	
17	Summary Judgment to Protect Confidential Financial	
18	Information, Motion for Order Shortening Time and Order	
19	Shortening Time (02/11/2020)	
20		
21	Notice of Entry of Order Shortening Time (02/11/2020)	3349-3368
22		
23	Defendant Las Vegas Development Fund LLC’s Opposition to	3369-3380
24	Motion to Seal and/or Redact portions of Defendants’	
25	Oppositions to Jennifer Piazza and the NVN Trusts’ Motions for	
26	Summary Judgment to Protect Confidential Financial	
27	Information (02/14/2020)	
28		
29	Notice of Entry of Order Regarding February 5, 2020 Status	3381-3385
30	Check (02/19/2020)	
31		
32	Notice of Entry of Stipulation and Order Resetting Hearings and	3386-3391
33	Briefing Schedule (02/25/2020)	
34		
35	Response to Defendant LVDF’s Objections to Statement of	3392-3411
36	Undisputed Facts and Countermotion to Strike (02/28/2020)	
37		
38	Notice of Entry of Order (03/02/2020)	3412-3416
39		

1	Notice of Entry of Order (03/03/2020)	3417-3421
2		
3	Notice of Entry of Order (03/12/2020)	3422-3429
4	Notice of Entry of Order (04/01/2020)	3430-3436
5		
6	Notice of Entry of Order (04/01/2020)	3437-3441
7	Defendant and Counterclaimant Las Vegas Development Fund,	3442-3500
8	LLC’s Notice of Motion and Motion for Leave to Amend the	
9	Countercomplaint <i>[redacted in district court filing]</i>	
	(04/03/2020)	
10	<u>VOLUME XV</u>	<u>PAGES</u>
11		
12	Defendant and Counterclaimant Las Vegas Development Fund,	3501-3640
13	LLC’s Notice of Motion and Motion for Leave to Amend the	
14	Countercomplaint <i>[redacted in district court filing]</i>	
	(04/03/2020) <i>(cont’d)</i>	
15	Declaration of C. Keith Greer in Support of Las Vegas	3641-3645
16	Development Fund, LLC’s Motion for Leave to Amend the	
17	Countercomplaint (04/04/2020)	
18	Opposition to Motion for Leave to Amend Counterclaim	3646-3692
19	(04/17/2020)	
20	Notice of Entry of Stipulation and Order to Replace Exhibit “A”	3693-3750
21	to Defendant’s Motion for Leave to Amend the	
22	Countercomplaint <i>[redacted in district court filing]</i>	
	(04/20/2020)	
23		
24	<u>VOLUME XVI</u>	<u>PAGES</u>
25		
26	Notice of Entry of Stipulation and Order to Replace Exhibit “A”	3751-3891
27	to Defendant’s Motion for Leave to Amend the	
	Countercomplaint <i>[redacted in district court filing]</i>	
	(04/20/2020) <i>(cont’d)</i>	
28		

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

Notice of Entry of Order (04/28/2020) 3892-3896

Reply in Support of Defendant and Counterclaimant Las Vegas Development Fund, LLC’s Motion for Leave to Amend the Counterclaim *[redacted in district court filing]* (04/29/2020) 3897-4000

VOLUME XVII **PAGES**

Reply in Support of Defendant and Counterclaimant Las Vegas Development Fund, LLC’s Motion for Leave to Amend the Counterclaim *[redacted in district court filing]* (04/29/2020) *(cont’d)* 4001-4006

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

Opposition to Defendant Las Vegas Development Fund LLC’s Motion for Clarification on Order Shortening Time (05/11/2020) 4017-4045

Notice of Entry of Stipulation and Order to Extend Discovery Deadlines and Continue Trial (Second Request) (05/13/2020) 4046-4056

Amended Order Setting Jury Trial (05/13/2020) 4057-4061

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) 4062-4067

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) 4068-4072

1	Defendants’ Answer to Plaintiff’s Second Amended Complaint;	4073-4250
2	and First Amended Counterclaim <i>[redacted in district court</i>	
3	<i>filings]</i> (06/04/2020)	
4	<u>VOLUME XVIII</u>	<u>PAGES</u>
5		
6	Defendants’ Answer to Plaintiff’s Second Amended Complaint;	4251-4262
7	and First Amended Counterclaim <i>[redacted in district court</i>	
8	<i>filings]</i> (06/04/2020) <i>(cont’d)</i>	
9	Notice of Entry of Order Granting Defendant Las Vegas	4263-4268
10	Development Fund, LLC’s Motion for Clarification on Order	
	Shortening Time (06/05/2020)	
11	Notice of Entry of Findings of Fact, Conclusions of Law and	4269-4275
12	Order Denying Plaintiff Front Sight Management, LLC’s	
13	Motion to Extinguish LVDF’s Deed of Trust, or Alternatively to	
14	Grant Senior Debt Lender Romspen a First Lien Position, and	
	Motion to Deposit Funds Pursuant to NRCP 67 (06/08/2020)	
15	Notice of Entry of Order Denying Plaintiff’s Motion to Quash	4276-4281
16	Subpoenas to Summit Financial Group and US Capital Partners,	
17	Inc. (06/08/2020)	
18	Notice of Entry of Order Denying Counter Defendants VNV	4282-4287
19	Dynasty Trust I and VNV Dynasty Trust II’s Motion for	
20	Summary Judgment (06/08/2020)	
21	Notice of Entry of Order Denying Counter Defendant Jennifer	4288-4293
22	Piazza’s Motion for Summary Judgment (06/08/2020)	
23	Notice of Entry of Order Shortening Time (06/12/2020)	4294-4305
24		
25	Affidavit of Service – Michael G. Meacher (06/16/2020)	4306-4308
26	Affidavit of Service – Top Rank Builders Inc. (06/16/2020)	4309-4311
27	Affidavit of Service – All American Concrete & Masonry Inc.	4312-4314
28	(06/16/2020)	

1
2
3
4
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12
13
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15
16
17
18
19
20
21
22
23
24
25
26
27
28

Affidavit of Service – Morales Construction, Inc. (06/16/2020)	4315-4317
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)	4318-4327
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)	4328-4333
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)	4334-4342
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)	4343-4349
Notice of Entry of Order Granting Defendants’ Motion for Protective Order Regarding the Defendants’ Private Financial Information (07/10/2020)	4350-4356
Acceptance of Service on Behalf of Efrain Rene Morales-Moreno (07/23/2020)	4357-4359
Counterdefendant Jennifer Piazza’s Answer to First Amended Counterclaim (08/21/2020)	4360-4386
Minutes of the Court (08/26/2020)	4387-4389
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (09/02/2020)	4390-4403

ALPHABETICAL INDEX

	<u>Volume(s)</u>	<u>Pages</u>
Acceptance of Service of Counterclaim on Counterdefendants Front Sight Management, LLC, Ignatius Piazza, Jennifer Piazza, VNV Dynasty Trust I and VNV Dynasty Trust II (06/14/2019)	VI	1316-1317
Acceptance of Service on Behalf of Efrain Rene Morales-Moreno (07/23/2020)	XVIII	4357-4359
Affidavit of Service on Chicago Title Company (10/22/2018)	I	0063
Affidavit of Service on EB5 Impact Advisors LLC (10/17/2018)	I	0060
Affidavit of Service on EB5 Impact Capital Regional Center LLC (10/18/2018)	I	0061
Affidavit of Service on Las Vegas Development Fund LLC (10/18/2018)	I	0062
Affidavit of Service on Linda Stanwood (10/17/2018)	I	0059
Affidavit of Service on Robert W. Dziubla (10/17/2018)	I	0058
Affidavit of Service – All American Concrete & Masonry Inc. (06/16/2020)	XVIII	4312-4314
Affidavit of Service – Michael G. Meacher (06/16/2020)	XVIII	4306-4308
Affidavit of Service – Morales Construction, Inc. (06/16/2020)	XVIII	4315-4317

1	Affidavit of Service – Top Rank Builders Inc.	XVIII	4309-4311
2	(06/16/2020)		
3			
4	Amended Complaint (10/04/2018)	I	0029-0057
5	Amended Order Setting Jury Trial (05/13/2020)	XVII	4057-4061
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

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

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

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

EXHIBIT 13

EXHIBIT 13

CONFIDENTIAL

From: Robert Dziubla
To: "Ignatius Piazza"
Cc: "Mike Meacher"; "Jon Fleming"
Subject: RE: EB5 fundraising in China
Date: Thursday, August 28, 2014 1:43:02 PM

Hi Naish,

We had a very good discussion with the President of Sinowel USA (Jay Li) this morning, who has now directly taken over responsibility for the Front Sight project within Sinowel. We explained to him many things, including your concern about the \$35k cost of providing an ongoing business concern valuation (at a cost of \$25k or more, including your CPA's costs) and an as-completed appraisal. After extended discussion, he conceded that Sinowel had been asking for a lot and said that Sinowel would be satisfied to receive just the as completed appraisal (cost - \$5k), plus an explanation of the current outstanding mortgage amounts, payment terms, etc., and the completed 2013 financial statements - i.e., there is no need to have the business valuation nor six month financial statements for Jan - June 2014 from your accountants.

Mr. Li also said that he would be delighted to visit with you and Front Sight and, if possible, even take a Front Sight course, as he has never fired a gun in his life. He has already seen the several marketing videos that you have made and thus has a solid understanding of what Front Sight does, its popularity in America, and the growing number of students.

Given that we are hoping to receive USCIS approval within the next 30 - 60 days, our strong hope is that Sinowel would be able to start its EB5 marketing efforts in China immediately, i.e. by the November - December timeframe and thus within the first quarter of the 2015 federal fiscal year. That way Front Sight will be one of the prime projects being marketed in the early part of the federal fiscal year before the Chinese visa allocation starts bumping up against the numerical cap sometime in the summer of 2015.

We'd be happy to jump on the phone with you and talk all of this over, as we sure would like to get that as completed appraisal done asap and certainly before the USCIS approval comes in, so that we are then in a position to start marketing immediately.

Thanks,

Bob

From: Ignatius Piazza [mailto:ignatius@frontsight.com]
Sent: Tuesday, August 26, 2014 5:47 PM
To: 'Robert Dziubla'
Cc: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: EB5 fundraising in China

Once you have USCIS approval and the Chinese nationals who run the US office of Sinowel have been out to Front Sight to see it, smell it, observe all the students attending courses and recognize what a gold mine Front Sight is now and how much more gold we will mine from it as soon as the

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resort is completed, I will then accept a personal meeting with them at my location in CA to answer their question and have them answer mine. At that point, if it feels right, I will authorize what you are requesting.

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Tuesday, August 26, 2014 4:21 PM
To: 'Ignatius Piazza'
Cc: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: EB5 fundraising in China

Hi Naish,

First off, we certainly hope that you and your family are well and that the Napa earthquake was far enough away that you weren't affected. If otherwise, please let us know and, especially, if there's anything we can do to help.

In the meantime, we are discussing with Sinowel your concerns below and will ring you as soon as we have run that Chinese maze.

Best regards,

Bob

From: Ignatius Piazza [mailto:ignatius@frontsight.com]
Sent: Friday, August 22, 2014 11:20 AM
To: 'Robert Dziubla'
Cc: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: EB5 fundraising in China

You make it sound so easy.

Wish it were true.

It will cost me another \$15K just to do interim first six months of 2014 financial statements.

Plus 15K for these appraisals and business valuations.

Plus another 5K in time spent with my accountant explaining everything when Sinowel's people don't understand the financials or mortgage documents.

How does Front Sight recover all the costs for this new request plus everything else I have spent up to this point?

What guarantee do I have that Sinowel will actually raise the 75 million without us ALSO having to pay the 100K for the road show and advertising if Sinowel doesn't raise the money?

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Friday, August 22, 2014 10:44 AM
To: Ignatius Piazza
Cc: Mike Meacher; 'Jon Fleming'
Subject: EB5 fundraising in China

Dear Naish,

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As you know, we are expecting to receive USCIS approval of the Front Sight project sometime in the next few weeks, at which point we will kick off the roadshows and fundraising in China.

Over the past many months, we have been aggressively working to grow our marketing agent network worldwide, with an especially strong focus on China first (as it accounts for about 80% of all EB5 funding), followed by India and then Latin America. We are very pleased to say that we have developed a strong relationship with a Chinese firm called Sinowel Wealth Management, which is the largest private wealth management firm in China. Sinowel has 16 wealth management offices across China (plus several more IT offices providing back-office support), and has over 150 financial advisors in China. Sinowel also has a US subsidiary in Washington DC that is staffed by a couple of really smart, and very nice, Chinese nationals who have lived in the US for over 15 years and have MBAs in real estate from US universities. That US subsidiary and a dedicated group of executives in China focus on EB5 fundraising.

Pursuant to an NDA (Non-Disclosure Agreement) that Sinowel executed several months ago, we have been educating them about the Front Sight project in great detail. They are very enthusiastic about the opportunity and have spent much time analyzing the information that we have provided and also educating their marketing team in China in preparation for the launch. As part of their due diligence, which has been exhaustive and well-taken, they have raised three points that we discussed with Mike yesterday, and Mike said we should talk with you.

But first, the really good news is that because Sinowel is a dedicated wealth management firm with over 20,000 clients, each of whom has a minimum net worth in excess of US \$500,000, they are able to market the Front Sight project directly and promptly to their already-established clientele without having to do endless advertising and roadshows across China, all of which is very expensive, typically costs about \$100k or more, and takes many months. Because of this significant advantage working with Sinowel, we anticipate that the \$96k that was allocated to "International Marketing in China" in our mutually agreed budget (see, Budget & Timeline attachment to the February 14 engagement letter), can be cut by at least \$25k.

Turning to Sinowel's due diligence requests, there are three:

1. Mortgage status and payments – to date, we have received from Front Sight and provided to Sinowel, financial statements for 2008, 2009, 2010, 2011 and 2012. The 2011 financial statements were prepared by your accountants, and on pages 9 - 10, Notes 3 - 5, discussed the outstanding secured mortgages and unsecured promissory notes:
 - a. Note 3 states that the Holocek first mortgage accrues interest at 18%. We understand from Mike, however, that the mortgage has since been modified and is now accruing interest at 12%. Unfortunately, the 2012 financial statements appear to be simply a Quickbooks type of report and have no notes or discussion of any kind concerning the mortgage.
 - b. Note 4 discusses the second mortgage that secures the litigation settlement liability. Again, the 2012 financial statements do not shed any further light on this obligation.

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- c. Note 5 discusses a number of unsecured promissory notes that accrue interest at 20%. The 2012 financials do not discuss this obligation. Mike told us yesterday that he thinks these have been paid off.

Sinowel request: Sinowel has asked that we provide them with 2012 and 2013 full year financial statements, including an explanation of the various mortgages and other unsecured obligations if any. In this regard, we also wish to receive a copy of the current mortgage documents, since all of us will need to have reviewed them and have them in our records in order to comply with the US securities law requirements attendant upon an EB5 raise.

2. Appraisal of as-completed Timeshare Resort – You will recall that we had Mark Lukens of Hospitality Real Estate Counselors (HREC) do an appraisal of the approximate 250 acres that Front Sight will dedicate to the Timeshare Resort. That appraisal concluded that the land had a value of \$25m and also concluded that there was indeed substantial market demand for the Timeshare Resort.

Sinowel request: Sinowel has asked that HREC expand their initial appraisal to include a projected value for the as-completed Timeshare Resort & Vacation Club. Sinowel very much wants this documentation because they firmly believe that it will make it even easier to sell the Front Sight project to their clients. We have discussed this request with Mark Lukens, and he has said that he can complete the assignment within a couple of weeks at a cost of \$5,000.

3. On-going Business Valuation of Front Sight – As part of our engagement with you, we did not contemplate, nor request, a business valuation of Front Sight on a going-concern basis, because at that time your plans were to split off the resort parcel into a separate company that would own and develop the timeshare resort -- and we were going to raise \$75m to develop this separate timeshare resort as a stand-alone entity. Subsequently, however, you changed your mind and decided that Front Sight Management would continue to own, develop and operate the entire property and business as an integrated entity.

Sinowel request: Sinowel has asked that we provide them with a valuation of Front Sight as an ongoing business concern, since the \$75m they will be raising from their clients will be used to build the timeshare resort and also improve the entire 550 acre property and business. Sinowel very much wants this documentation because they firmly believe that it will make it even easier to sell the Front Sight project to their clients. We think this is a reasonable request. As you probably know, however, getting an ongoing business concern valuation from a brand name firm such as Goldman Sachs or even Houlihan Lokey (LA based regional investment bank) will cost at least \$50 – 200k. We discussed this cost concern with Sinowel, and they would be comfortable with a valuation from a firm that we have confidence in. Based on that, I talked with an old investment banking buddy of mine, Ed Blum, who is based in Washington DC, has his own investment banking firm (Blum & Co., www.blumandco.com) and a very smart and experienced investment banker. Because of our 20-year friendship, Ed has agreed to do a business valuation of Front Sight for \$10k, which is very reasonable. Ed has said that once he receives 5 years of financial statements (2009 – 2013) plus a summary accounting for the first six months of 2014, he can complete the business valuation in about 2 weeks.

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In sum, for Sinowel to be in a position to market Front Sight effectively and quickly in China, they need the expanded appraisal and a business valuation, both of which will cost \$15k. Because Sinowel will be our lead agent in China for the EB5 raise, the international marketing costs will decrease by more than the \$15k. We kindly ask that you approve these requests.

Please don't hesitate to let us know if you have any questions.

Best regards,

Bob

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3006

EXHIBIT 14

EXHIBIT 14

EB5 Impact Capital CONFIDENTIAL

EB5 Impact Capital Regional Center, LLC
916 SOUTHWOOD BOULEVARD, SUITE 10
P.O. BOX 3003
INCLINE VILLAGE, NEVADA 89430

Telephone: (858) 499-4367
Facsimile: (858) 332-1725

Via Email to: USCIS.immigrantInvestorProgram@uscis.dhs.gov

With copy via email to:

Nevada Senator Dean Heller (Dean_Heller@heller.senate.gov)

Copy to Sarah Paul, Legislative Director (Sarah_Paul@heller.senate.gov)

Nevada Governor Brian Sandoval (governor@govmail.state.nv.us)

Nevada State Senator Pete Goicoechea (pgoicoechea@yahoo.com)

January 23, 2015

Director Leon Rodriguez
U.S. Citizenship & Immigration Service
111 Massachusetts Avenue
Washington, D.C.

Re: Expedite Request for **RCW 1410551734**: EB5 Impact Capital Regional Center LLC and Front Sight Exemplar Project

Dear Director Rodriguez:

We are submitting this request to expedite on behalf of ourselves and with respect to Front Sight Firearms Training Institute ("Front Sight"), as the exemplar project of EB5 Impact Capital Regional Center LLC ("Regional Center"). Our I-924 application was received by USCIS on April 15, 2014 (Form I-797C is attached, Notice of Action / Receipt).

When the I-924 was filed, the USCIS processing timeline was about 4.5 months. In August 2014, the processing timeline then jumped to about 8.3 months, and then jumped to 9 months a month or two later. Now, on January 12, 2015, the USCIS timeline has jumped to 10.3 months. These continual delays have caused severe financial loss to Front Sight and the Regional Center. They are also harming Nye County, Nevada by denying this high unemployment jurisdiction the 1,822 jobs this project will deliver. These costs are further defined below.

Front Sight, EB5 Impact Capital Regional Center LLC and Nye County, Nevada are Suffering Severe Financial Loss

Front Sight is the most highly respected and largest firearms training institute in the United States. Front Sight trains over 31,000 civilian, military and law enforcement students per year (representing 88,273 training days) in safe and effective firearms handling, which of course is something of tremendous importance to every responsible person in the United States. Because of its burgeoning popularity and attendance, Front Sight is desperately in need of new lodging facilities to host its tens of

FS 03006

thousands of students. Front Sight therefore has engaged the RC to raise \$75m to fund the development of the Front Sight Resort & Vacation Club ("EB5 Project") and related facilities.

In addition, Front Sight is currently the 13th largest employer in Nye County, Nevada. Upon completion of the EB5 Project, Front Sight will add 408 new full-time jobs to Nye County, thus making Front Sight the 4th largest employer in the County. See report by the Nevada Department of Employment Training and Rehabilitation, <http://www.nevadaworkforce.com/?PAGEID=67&SUBID=169>, and Economic Impact Analysis contained within the I-924 application, p. 6 (Nov. 18, 2013).

a. Double the Interest Rate: 12% vs. 6% - \$500,000 Loss

Currently, Front Sight has about \$10,000,000 in private mortgage debt that bears an annual interest rate of 12%. The Regional Center has agreed to sponsor Front Sight as an exemplar project and through its affiliate, Las Vegas Development Fund LLC ("Fund"), provide to Front Sight a \$75,000,000 EB 5 loan bearing interest at the rate of 6% annually. The first \$10 million of the new loan from the Fund will be used to pay off the existing debt, including transactional costs and fees, thus cutting the current annual interest rate of 12% in half.

Continuing delays in the approval of the I-924 are causing Front Sight's annual interest cost to be double what it should be and is inflicting approximately \$500,000 per year of losses on Front Sight.

b. Increased Construction Cost - \$2.2 Million

The EB5 Project has a hard construction cost of \$49,095,108. See, Exhibit H to EB5 Project Business Plan submitted as part of the I-924.

Construction costs have increased by 4.45% between 2013 and 2014. See the attached article from one of the leading US general construction companies: Turner Construction Company, Turner Building Cost Index 2014 (also can be viewed at <http://www.turnerconstruction.com/cost-index>).

Because of the delayed approval, Front Sight will suffer **increased construction costs of at \$2,184,732**, which is a severe financial loss.

c. Potential loss of EB5 Funding

The Regional Center and its dedicated marketing agents in China and elsewhere around the world are solely dependent on the approval of the Regional Center and the Front Sight exemplar project in order to provide the \$75m construction loan to Front Sight. At a 6% interest rate, this loan represents \$4.5 million per year of lost interest income to them. Because of the USCIS processing delay, Front Sight is deeply concerned that the Regional Center and the Fund will abandon the Front Sight exemplar project and proceed to other projects that can be done immediately. That potential loss of EB5 funding would

Director Leon Rodriguez
U.S. Customs & Immigration Service
January 23, 2015
Page 3

CONFIDENTIAL EB5 Impact Capital

force Front Sight to continue paying 12% interest on its current mortgages, representing added interest cost of \$500,000 per year for four years, at a total cost of \$2,000,000.

The attached Expedite Request from the Regional Center to USCIS supports our concern about the Regional Center having to focus its efforts on other projects. The loss of the Regional Center support for the EB5 project will materially impact our ability to build the Resort & Vacation Club, resulting in losses to Front Sight in excess of \$350,000,000. See, EB5 Project Business Plan submitted as part of the I-924, *Project Financial Projections*, p. 4.

d. Advertising and Reputational Loss - \$3.3m++

Front Sight has been spending over \$3.3 million in advertising the forthcoming Resort & Vacation Club to its more than 750,000 subscribers. The failure to build the Resort because of the delayed approval means that this advertising expense is for naught and not only represents a **direct loss of \$3.3m**, but also has inflicted substantial reputational loss on Front Sight that could easily exceed many times this amount. The loss of credibility with the Front Sight student base is substantial because of the USCIS delays.

e. Costs to EB5 Impact Capital Regional Center LLC - \$125,000

The EB5 Impact Capital Regional Center LLC has invested over \$125,000 in the exemplar project of Front Sight. We did so because Nye County, Nevada does not have a Regional Center with the appropriate job codes for a resort project. If the Front Sight project does not receive USCIS approval, the costs of developing a Regional Center that includes Nye County could be lost.

f. Costs to Southern Nevada and Nye County, Nevada

The jobs created by the Front Sight project according to Professor Sean Flynn, Ph.D. of Impact Econometrics LLC, will be 1822. Given the high unemployment and the even higher under employment in Nye County, Nevada the economic impact of the delay of these jobs is millions of dollars that is not going into the struggling economy of Southern Nevada.

Because of these quantifiable and substantial costs of continued delay, we respectfully request that USCIS immediately approve EB5 Impact Capital Regional Center LLC and Front Sight Exemplar Project (RCW 1410551734).

Director Leon Rodriguez
U.S. Customs & Immigration Service
January 23, 2015
Page | 4

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Please contact the undersigned if you require further information or detail on this request.

Respectfully submitted,



Robert W. Dziubla
President & CEO

cc: Front Sight Firearms Training Institute

Encl.

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3011

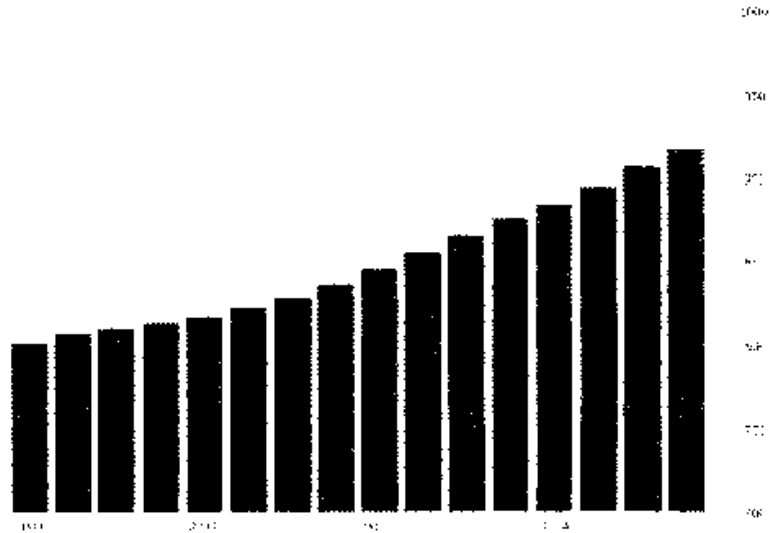
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Turner Building Cost Index

2014 Fourth Quarter Forecast

"Growth in non-residential construction was steady in the fourth quarter in virtually all domestic markets. Higher construction cost escalations in urban centers with increased construction activity, as well as selective mega-projects, are driving the average domestic construction cost increases."

Attilio Rivetti
Vice President



Quarter	Index	Δ%
4th Quarter 2014	917	0.99
3rd Quarter 2014	908	1.34
2nd Quarter 2014	896	1.24
1st Quarter 2014	885	0.80

Year	Average Index	Δ%
2014	902	4.4
2013	864	4.1
2012	830	2.1
2011	812	1.6
2010	799	-4.0
2009	832	-8.4
2008	908	6.3
2007	854	7.7
2006	793	10.6
2005	717	9.5
2004	655	5.4
2003	621	0.3
2002	619	1.0

Turner

FS 03010

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

RECEIPT NUMBER RCW1410551734		CASE TYPE (24) Application for Regional Center Under the Immigrant Investor Pilot Program
RECEIVED DATE April 15, 2014	APPLICATION TYPE: A (INITIAL)	REGIONAL CENTER NAME EB 5 IMPACT CAPITAL REGIONAL CENTER LLC
NOTICE DATE April 15, 2014	PAGE 1 of 1	REGIONAL CENTER ID ID1410551734
CARL MATTHEW SCHULZ DENTONS US LLP RE: EB 5 IMPACT CAPITAL REGIONAL CENTER LLC 1530 PAGE MILL ROAD STE 200 PALO ALTO CA 94304		NOTICE TYPE: Receipt Notice

Receipt Notice - This notice confirms that USCIS has accepted your "Application for Regional Center Under the Immigrant Investor Pilot Program" (Form I-924) for processing. This notice does not grant any immigration status or benefit. This notice does not grant any immigration status or benefit.

Processing Time - The current processing time for this type of case is estimated at 120 days. Unlike many other USCIS case types, verification or tracking of this case is not available on our website. We will notify you by mail when we make a decision on this case or if we need further evidence to establish your eligibility for the regional center designation.

Unique Identifier - In the top portion of this Notice, you will find a unique identifier that has been assigned to your Form I-924. Unlike a receipt number which changes with every filing, this unique identifier is permanently assigned to your approval or prospective regional center, and will be associated with any future request to create the regional center. Please refer to your regional center's unique identifier as well as to the Form I-924 receipt number in all subsequent correspondence with USCIS regarding this application.

E-mail Communication Regarding Your Pending Form I-924 Application - USCIS has established a direct e-mail communication tool to facilitate communication between USCIS and those applicants with pending Form I-924s. Form I-924 applicants may use the e-mail communication process to correspond with USCIS regarding pending Form I-924 applications, to include questions that may arise if USCIS issues a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID). USCIS may also reach out to Form I-924 applicants via e-mail to informally ask for clarification on certain issues in order to facilitate USCIS' review, understanding, and adjudication of the Form I-924 application. USCIS may also e-mail a courtesy copy of the RFE or NOID to the e-mail address listed on the I-924 and, if applicable, to the e-mail address listed on the Form G-28 associated with the application.

Please use the following table to determine which email address has been assigned to your Form I-924.

If your unique identifier ends in the number:	Then please utilize this email address:
0, 1, or 2	DSC-EBS-RCID0-2@cis.gov
3, 4, or 5	DSC-EBS-RCID3-3@cis.gov
6 or 7	DSC-EBS-RCID6-7@cis.gov
8 or 9	DSC-EBS-RCID8-9@cis.gov

Example: If a regional center's unique identifier is ID432000000, then the regional center's Form I-924 has been assigned to email account DSC-EBS-RCID0-2@cis.gov, as the unique identifier ends in "0".

E-mail "Subject Line" Advisory - Please ensure that the subject line in your email correspondence contains the following information in this order: (1) Regional Center Unique Identifier; (2) Receipt Number; (3) Regional Center Name. Doing so will facilitate USCIS' timely handling of and response to your email correspondence.

E-mail Scope - This e-mail communication tool is to be used solely to facilitate communication between applicants with a pending Form I-924 and USCIS. The scope of the communication must relate to matters concerning the pending Form I-924. The direct e-mail communication process is not a forum for general policy and legal questions about adjudicative procedures or decisions, or for questions relating to either "Immigrant Investor by Alien Entrepreneur" (Form I-526), "Partnership by Entrepreneur to Remove Conditions" (Form I-820), or any "Applicant Waiver" (Form I-600). USCIS will not respond to e-mails received concerning issues unrelated to the currently pending Form I-924. For more information about how to make other EB-5 inquiries, visit the EB-5 Inquiries page on the USCIS website (www.uscis.gov). USCIS will not respond to e-mails received concerning issues unrelated to the currently pending Form I-924 via this email communication process.

General Questions - USCIS has a page entitled EB-5 Inquiries at www.uscis.gov that outlines how the public may make other inquiries at EB-5 related matters, to include inquiries that you may have after the Form I-924 has been adjudicated. This page identifies the EB-5 inquiries that are appropriate to send to the general EB-5 mailbox (uscis-immigrantinvestorprogram@dh.gov), and other avenues that can be used to send questions or inquiries to USCIS that are not suitable for the general EB-5 mailbox.

Attorney Or Accredited Representative - If a valid Form G-28 is associated with the Form I-924, USCIS will need to have a valid Form G-28 e-mail address for the legal representative in order to use this e-mail process to correspond with the Form I-924 applicant. If a valid Form G-28 is associated with the Form I-924 applicant, but USCIS does not have a valid Form G-28 e-mail address, then one will need to be obtained prior to USCIS sending any out-going e-mail correspondence to the applicant which discusses issues related to the Form I-924. In such circumstances, the legal representative should provide an updated Form G-28 with a valid e-mail address by sending a pdf of a fully executed Form G-28 to the EB-5 mailbox at uscis-immigrantinvestorprogram@cis.gov.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVC
CALIFORNIA SERVICE CENTER
P.O. BOX 30111
LAGUNA NIGUEL CA 92607-0111
Customer Service Telephone: (800) 375-5283



Please see the back of this notice for important information.

EXHIBIT 15

EXHIBIT 15

CONFIDENTIAL

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

Mike

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

Bob

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

Bob,

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

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

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

Thanks,

Mike

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

Dear Mike,

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

Bob

FS 03698

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From: Mike Meacher [<mailto:meacher@frontsight.com>]
Sent: Tuesday, July 28, 2015 5:13 PM
To: Robert Dziubla <rdziubla@eb5impactcapital.com>; Jon Fleming <jfleming@EB5Impactcapital.com>
Subject: Request for marketing and travel money

Bob and Jon,

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

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

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

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

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

Thanks,

Mike
Meacher@frontsight.com
702-425-6550

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

Dear Mike,

We really do disagree with you on this point.

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

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

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

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

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

Bob

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

Bob and Jon,

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

Mike
Meacher@frontsight.com
702-425-6550

FS 03700

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

Mike

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

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

Best regards,

Bob

FS 03701

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MEMORANDUM

TO: Ignatius Piazza
Mike Meacher

FROM: Robert Dziubla

CC: Jon Fleming

RE: International marketing and travelcosts

DATE: 29 July 2015

Dear Naish and Mike:

We look forward to working with you to resolve the issue of international marketing and travel costs as quickly as possible so that we can devote our efforts to actually raising the \$75m. Fortunately, we all agree on the key point, which is as Mike stated in his email: "We want it sold out ASAP."

1. Countries other than China

During the course of our discussions with you over the past many months, we have stated that we intend to market the project worldwide and, specifically, that in addition to China we had established a marketing agent platform in India. Your understanding was that those references were tangential.

While China currently accounts for the majority of EB5 money, we believe that it is utterly essential to target other countries for five strong reasons:

- a. **China EB5 Visa Allocation Maxed Out**. Because the EB5 program is so popular in China, the EB5 visa allocation for China maxed out starting in May 2015 and the US State Department has implemented a "retrogression" policy with regard to Chinese EB5 visas. This means that all new Chinese EB5 applicants must now get in line and wait until an EB5 visa becomes available for them. The practical effect is that Chinese applicants get assigned a number and will have to wait, at least for now, another year or two to get their EB5 visa and, therefore, their waiting time will be in the 4 – 5 year range, with that waiting time predicted to grow perhaps to 6 or 7 years.

No one knows whether and to what extent this retrogression will chill the Chinese desire for EB5 visas.

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- b. **China Stock Market Volatility.** Right now the Chinese markets are experiencing severe volatility, with the Shanghai and Shenzhen stock markets declining by 8% on Monday alone. No one can accurately predict all the results of that level of volatility and its potential effect on EB5 financing in China. It may have a positive effect, or it could have a negative effect.

- c. **China Real Estate Bubble.** Over the past year or more, China has experienced a large real estate bubble with many large apartment and retail complexes remaining vacant. The press is replete with stories and pictures of those ghost towns. The Chinese government moved to correct this bubble and put restrictions on real estate lending and ownership periods etc. Because many people had significant amounts of money invested into the real estate market, they are now hurting. And for those people who still had excess cash because of the high Chinese savings rate and were dissuaded from real estate investing, they then turned to investing that money into the stock market – which as noted above is going through a major correction. In short, both of the major Chinese investment markets – real estate and stocks – are experiencing high volatility. Again, no one can accurately predict all the results of that level of volatility and its potential effect on EB5 financing in China. It may have a positive effect, or it could have a negative effect.

- d. **EB5 Increasingly Popular Worldwide.** EB5 has become increasingly popular around the world because the US provides safety and stability to investors from around the world who are beset by the increasing strife and turmoil in so many countries. By comparison to other countries that have similar green card visa programs or to other US green card programs, the EB5 program is comparatively available and cheap.

For example, Chinese investors so overwhelmed the Canadian program that it was shut down entirely in 2014. Portugal, Monaco and other such countries are charging \$1 million or more for their green cards with investment periods of five years or more. While an EB5 visa (green card) can be obtained in as little as two years for only \$500k, other US green cards (permanent work, family, refugee, etc.) can take 5 – 10 years, if available at all

- e. **Don't Put All Your Eggs in One Basket.** Need we say more?

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2. Target Countries

For the two years before he established EBS Impact Advisors with Jon, Bob had a 50/50 joint venture with Guggenheim Partners, which is the \$200 Billion global money management firm based in New York and Chicago. That JV was called Guggenheim Sovereign LLC, and Bob was the Vice Chairman & General Counsel. The JV's mandate was to advise sovereign states, state-owned enterprises and large multinational corporations on economic development around the world. As Vice-Chairman, Bob had responsibility for, among other things:

- ✓ Meeting with every major sovereign wealth fund in the Middle East,
- ✓ Advising Saudi Arabia on how to finance the \$100+ Billion green-field development of the "King Abdullah City for Atomic & Renewable Energy," which was to be the late King Abdullah's legacy to the Saudi people;
- ✓ Advising the government of Ukraine on the \$4 Billion privatization of the Ukrainian agriculture industry, which entailed meeting with top investors and government wealth funds in Russia, Singapore, Malaysia, China and elsewhere.

Because of that experience with Guggenheim coupled with Bob's 20+ years as an international partner at the world's two largest law firms, we have relationships around the world and have had preliminary discussions with many potential agents. In order of importance, we plan to market the Front Sight project, both directly ourselves and through agents that we engage, in the following countries:

Countries

China Mainland

India

South Korea

Middle East – UAE, Kuwait, Qatar, Abu Dhabi, Bahrain, Saudi Arabia

Japan

Australia

Taiwan

Malaysia

Vietnam

Singapore

Russia

Ukraine

Iran

Canada

Brazil

Africa

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3. Why Can't Sinowel Sell It Out Quickly?

Mike posed this question to us in his email of Tuesday. The answer is that maybe Sinowel can sell it out quickly and maybe they can't. We won't know, however, until Sinowel has done all of its marketing and sourced the investors.

To avoid unpleasant surprises, however, we have planned from the beginning to market the Front Sight project in many countries around the world. And our strong advice is don't put all your eggs in one basket and rely solely on Sinowel. Just imagine how angry and frustrated you would be if you relied on Sinowel alone and they sourced 49 investors. We would then have \$24.5m sitting in escrow but would never be able to fund that to Front Sight or start on the project because the minimum raise of \$25m failed by one investor.

4. Timeline

Our plan and goal is to start the marketing immediately (assuming that Front Sight funds the marketing costs immediately) and to have a minimum of 50 investors into escrow by October 30 - November 15, 2015, so that we can start disbursing the first \$25m to Front Sight since the minimum raise was achieved, with another 50 investors into escrow by January 15, 2016, and the final 50 investors into escrow by April 30, 2016. Given that construction itself will take two years and that construction costs tend to start out slowly and then increase more rapidly as completion occurs, Front Sight will have plenty of money available to fund the build out.

Both Bob and Jon will start traveling extensively as soon as we receive the marketing & travel funds and will continue those travels for 4 – 8 months until we have completed the raise. We will be visiting many, and perhaps all, of the countries noted above, and we will be marketing the Front Sight project directly and through agents that we may engage depending on the country. For our direct marketing efforts, we will hire local staff to coordinate media and direct marketing campaigns, and for our agent platforms we will immediately have our local attorneys finalize the agent marketing agreements. We will be spending more time abroad than we will at home with our families. That is a huge burden but something that we have agreed to do and that we will accomplish.

The costs for this level of international travel are high. Even if we combine several countries into one trip to minimize the airfare, for example a trip from San Diego to Beijing to Hong Kong to Singapore to Taiwan and then back to San Diego will cost about \$9k for the airfare alone. Hotels and meals will add another \$2k at least. That's \$11k for one trip alone. Another example, a single trip going from San Diego and hitting Dubai, Qatar, Saudi Arabia, Kuwait, then London (where most wealthy Arabs spend August and September) ending up back in San Diego costs \$13k for airfare alone. Add another \$3k for hotels and meals, and that's \$15k. So, two trips alone end up costing \$26k.

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To make this happen, we will require the full amount that was agreed in our engagement letter, i.e. \$101k.

We look forward to getting started ASAP.

EXHIBIT 16

EXHIBIT 16

EB5 Impact Capital Regional Center, LLC **CONFIDENTIAL**

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

Telephone: (855) 793-6000
Facsimile: (855) 332-1795

June 30, 2015

Senator Dean Heller
U.S. Senate
324 Hart Senate Office Building
Washington D.C 20510

RE: USCIS – I-924 Application (Exemplar Project)
EB5 Impact Capital Regional Center, LLC
RCW 1410551734

Dear Mr. Heller;

I am writing to you to request immediate assistance in making contact with the United States Citizenship and Immigration Service to obtain formal approval and certification of our Regional Center.

On April 15, 2014, our company filed an I-924 application for approval of our Regional Center with the USCIS. Our application also included detailed information on the exemplar investment project that we will be raising \$75,000,000 in foreign investor funds. The project is located just outside of Pahrump in Southern Nevada. This is part of and will be owned by Front Sight Firearms Training Institute, a highly successful training facility. In addition, the project will create over 1,822 new full time jobs in the area. As you know Nye County has one of the highest unemployment rates in the entire country.

We are now extremely frustrated that we have been waiting over 14 months for our approval from the government. We believe that our approval and the development of the project will greatly benefit the people in your constituency.

We appreciate your assistance with contacting the USCIS for approval of our Regional Center.

Best regards,

EB5 IMPACT CAPITAL REGIONAL CENTER, LLC



Jon D. Fleming
Senior Vice President
JFleming@EB5ImpactCapital.com

Cc: Robert Dziubla – President - EICRC
Mike Meacher – COO - Frontsight

FS 03682

CONFIDENTIAL

COMMITTEE
FINANCE
BANKING, HOUSING, AND
URBAN AFFAIRS
COMMERCE, SCIENCE, AND
TRANSPORTATION
VETERANS AFFAIRS
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510

PRIVACY ACT CONSENT FORM

DATE: 6.30.15

TO WHOM IT MAY CONCERN:

I am aware the Privacy Act of 1974 prohibits the release of information in my file without my approval. I hereby authorize the below listed agency (agencies) to provide information regarding my case or claim.

Constituent Name: EBS Impact Capital Regional Center, LLC

Address: 916 Southwood Boulevard, Suite 16

City, State, Zip Code: Incline Village, NV 89450

Email: j.fleming@ebsimpactcapital.com Phone: 858-793-6000

NV Business ID
Social Security #: NV20131553863 Formation Date of Birth: 9/16/13

Agency: USCIS - EBS Program Case/Claim: BCW 1410551734

Signature(s): [Signature] JON D. FLEMING, SVP

If it will be necessary to have any information released to a third party, such as a parent or spouse, please list the third party name(s) here: Robert Dzubla

Have you contacted other congressional representatives regarding this matter? YES NO (circle)
If so, who? Rep. Hardy

Briefly identify the difficulty you are having (attach additional pages if needed):

Please see attached letter.

Please include copies of any documentation you may have, which will help expedite this inquiry. Do not send original documents. Please return to Senator Dean Heller in either the Reno office: Phone: 775.686.5770, Fax: 775.686.5729 or in the Las Vegas office: Phone: 702.388.6605, Fax: 702.388.6501.

EXHIBIT 17

EXHIBIT 17

CONFIDENTIAL

From: Jon Fleming
To: "Mike Meacher"; "Robert Dziubla"
Cc: "Ralf Henrich"
Subject: RE: Potential Investor source for EB-5
Date: Thursday, May 5, 2016 11:27:42 AM
Attachments: Front Sight PPT - English.xliff

Mike – Thank you very much for the introduction to Ralf Henrich.

Hello Ralf – It is nice to meet you via email. I am forwarding to you our Front Sight Resort Powerpoint marketing presentation, which is the overview of the EB5 investment opportunity. Please review this and we can schedule a call for Bob and I to get acquainted with you and discuss how you may be able to assist us in the EB5 marketing in Panama. I would like to suggest that we have a call with you on Monday morning. Would a call at 10am Pacific time work for you? Thank you for your interest in Front Sight.

Best regards,

Jon Fleming, SVP
EB5 Impact Capital Regional Center, LLC
844.889.8028 Toll Free
858.793.6000 Office
858.245.0949 Mobile

From: Mike Meacher [mailto:meacher@frontsight.com]
Sent: Thursday, May 05, 2016 10:04 AM
To: Robert Dziubla; Jon Fleming
Cc: Ralf Henrich
Subject: Potential Investor source for EB-5

Bob and Jon,

I have a friend in Panama, Ralf Heinrich, who is in the personal security and resort security business. He and his sons will be coming to Front Sight for a handgun class later in May.

I spoke with Ralf today about our EB-5 capital raise. He has many contacts within Panama who he believes may be interested in securing a U.S. visa.

Ralf is requesting that you communicate with him and give him the summary documents of the offering. He would also want to register as a placement agent to receive a commission on any of his leads who invest.

Please send Ralf all of what you think he may need. Perhaps you can arrange a call to answer any questions he may have before he makes the presentation to some of his contacts.

Thanks,

FS 04587

CONFIDENTIAL

Mike
Meacher@frontsight.com
702-425-6550

FS 04588

EB-5 INVESTMENT OPPORTUNITY

FRONT SIGHT



TIMESHARE RESORT
\$75m Senior Construction Loan

August 2015

Executive Overview

Front Sight

Firearms Training Institute

- Established in 1991
- Largest firearms self-defense training institute in the USA
- 550 acre facility near Las Vegas
- 34,424 students trained in 2013
- 150,000 paid members
- Developer is contributing \$75m of equity to this project

Timeshare Resort

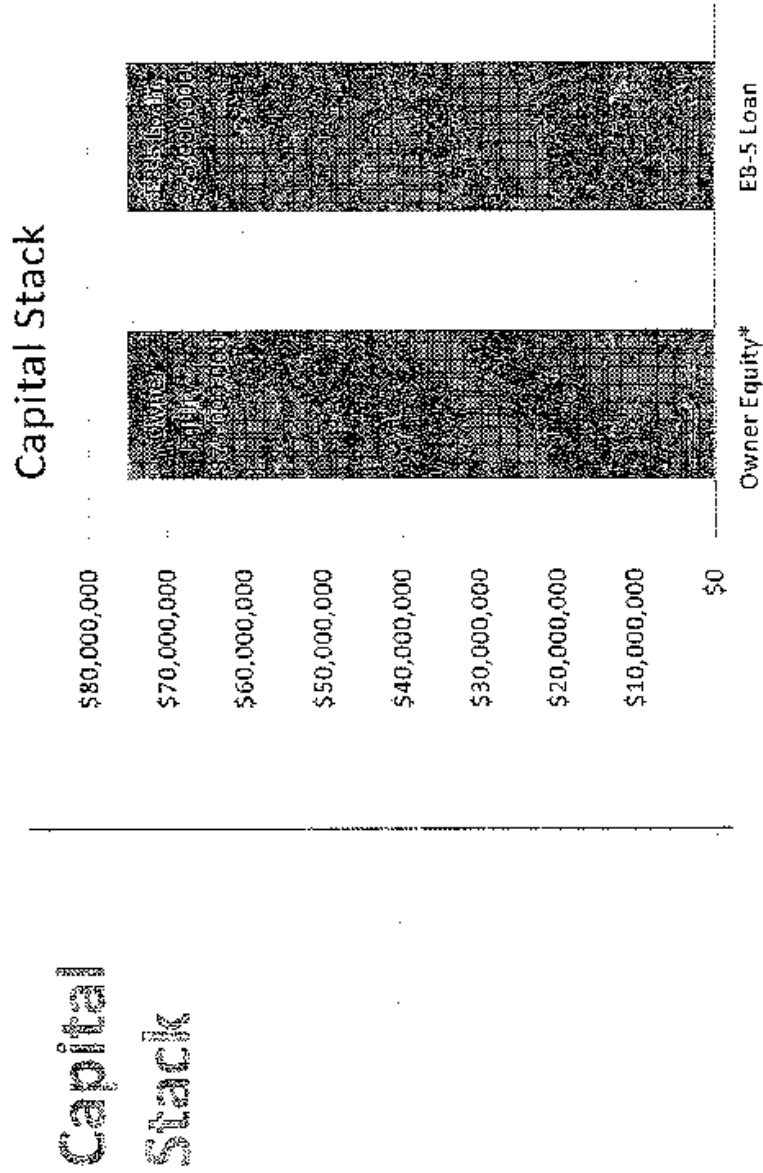
- 102 timeshare units / 150-pad luxury RV resort
- 28 new training ranges
- 85,000 square foot central facility with classrooms, restaurants, pro shop and administrative offices
- 10,000 square foot Community Center / Clubhouse
- 5,000 square foot Health & Fitness Center
- 4,000 square foot Spa & Wellness Center
- Kids' Club

Executive Overview

**Financial
Return**

- **Gross revenue = \$642m in 5 years**
- **Net income = \$363m in 5 years**
- **Course fees and retail sales alone generate \$70m++ by year 5**

Executive Overview



* Comprised of \$25m appraised value for resort parcel and \$50m for appraised value of the Training Institute business.

Executive Overview

USCIS Exemplar Approval

- USCIS gave **EXEMPLAR** approval to both the EB5 Impact Capital Regional Center and the Front Sight project on July 27, 2015
- All I-526s must receive deference from USCIS – high probability of approval

Job Creation

- 1,822 jobs created – 21% job surplus

Resort Management: LaTour Hotels & Resorts

- LaTour Hotels & Resorts is a premier resort and timeshare vacation management firm with 14 resorts worldwide (www.latourhotelsandresorts.com)
- Founded by famous hotelier, Tom LaTour, CEO & Chairman of world-famous Kimpton Hotels
- LaTour will manage all timeshare marketing, sales and post-sale management, including the homeowners' association and the Vacation Club

Executive Overview

Vacation Club

- Front Sight is a points based Vacation Club that will be part of the RCI vacation club network
 - RCI is the largest vacation club in the world
 - 5,331 participating resorts
 - 25,000,000 members
 - (www.rci.com)
- Front Sight unit-owners can trade their points for use at other resorts worldwide, including cruises
- RCI members can trade their points for unique vacations at Front Sight
- The points-based Vacation Club will make Front Sight available to over 25,000,000 new students worldwide
- RCI hotels and resorts in China include properties in Beijing, Shanghai, Hainan, Guangdong, Hangzhou, Chongqing, Kunming, Anhui, Fujian, Yunnan, Ningbo, Shannxi, Guilin and others

6

**Unmet
Demand
&
Increased
Class
Schedule**

- Front Sight classes steadily run at 500 – 1,000 students
- Currently there are no on-site hotel / lodging facilities
- 54% of Front Sight members are interested in buying a timeshare unit
- New evening and night-time classes planned with on-site lodging
- Only 314 poor quality hotel rooms total in local area – 20 minute drive and usually sold out
 - Two star properties
 - Mediocre facilities

Executive Overview

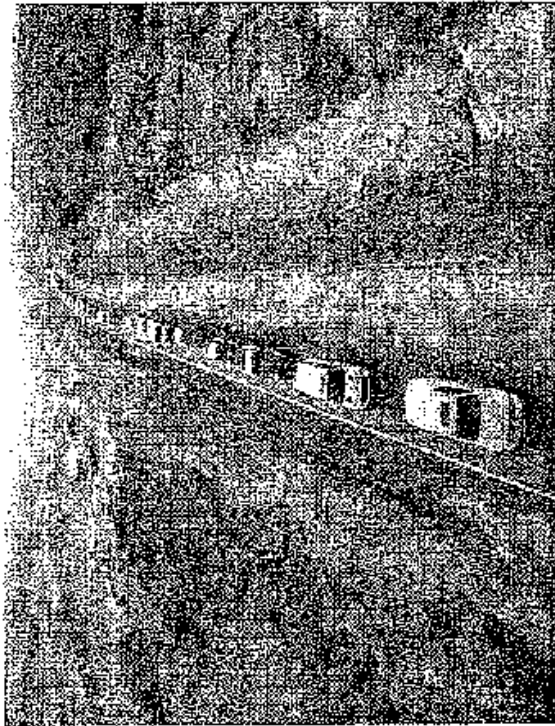
FREE LIFETIME MEMBERSHIP IN FRONT SIGHT

Every investor will receive a FREE membership in Front Sight:

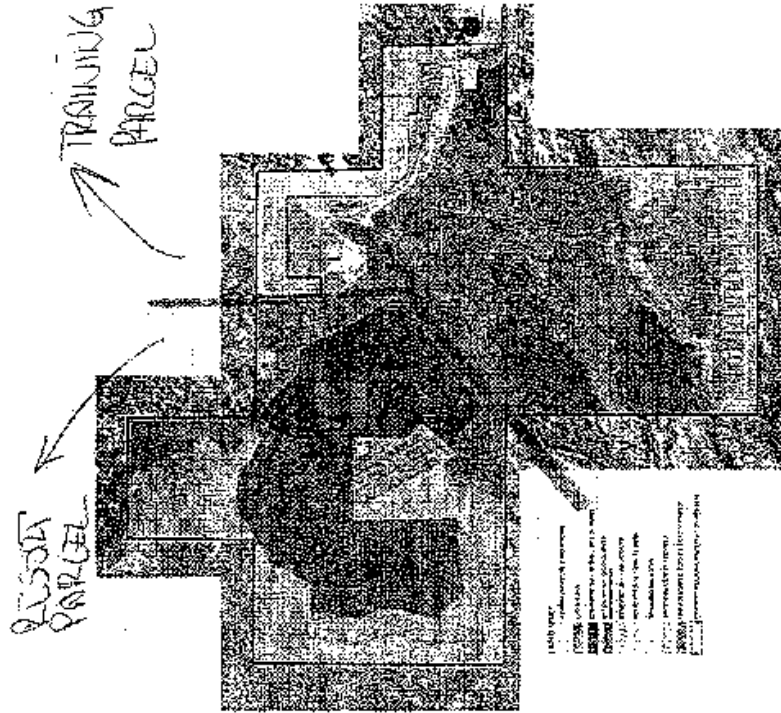
- Free *lifetime* membership
- Lifetime access to all 2-day and 4-day courses for handgun, shotgun and rifle classes, which includes rental equipment and ammunition
- FREE use of one of the new Front Sight Resort & Vacation Club units while you are attending your free course
- Elegant wall certificate confirming your membership, plus a wallet membership card
- Free Front Sight member's cap

Members lined up to enter Front Sight

3-mile line for course registration – current situation



Land Use Plan



Front Sight Vacation Club & Resort - Rendering



Project Overview

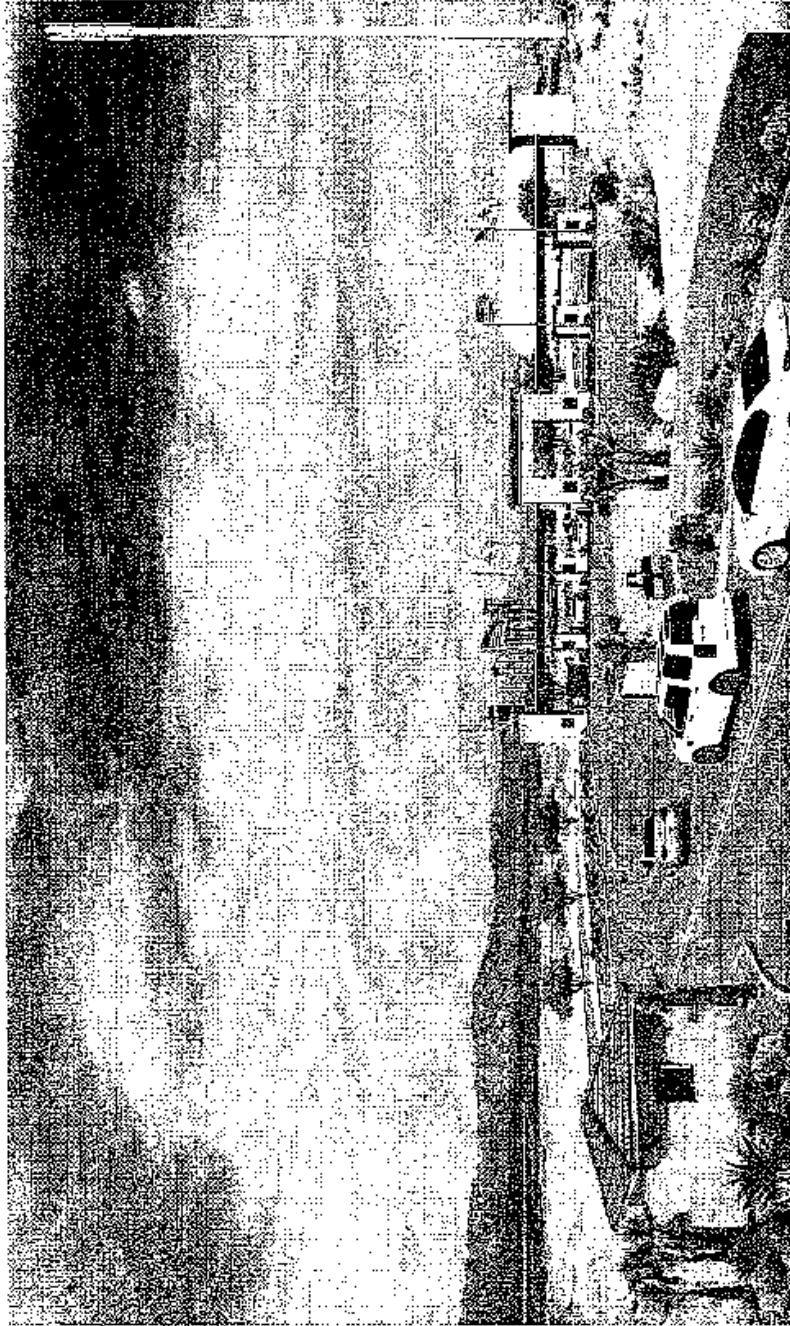


Luxury RV Pads and Condos

Retail Area adjacent to Timeshare Vacation Club

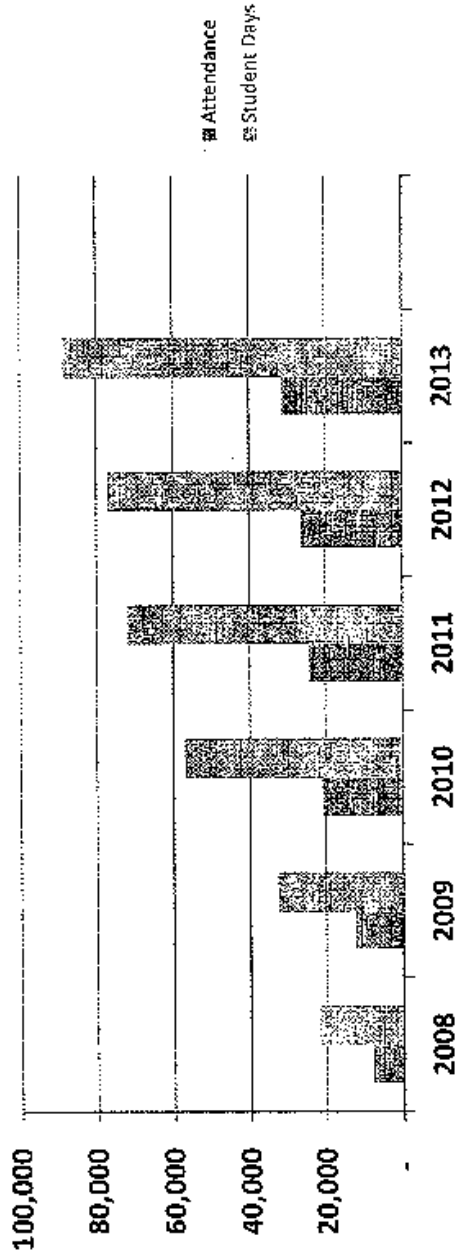


New Entry Facility



Student Attendance

Exponential Student Growth*

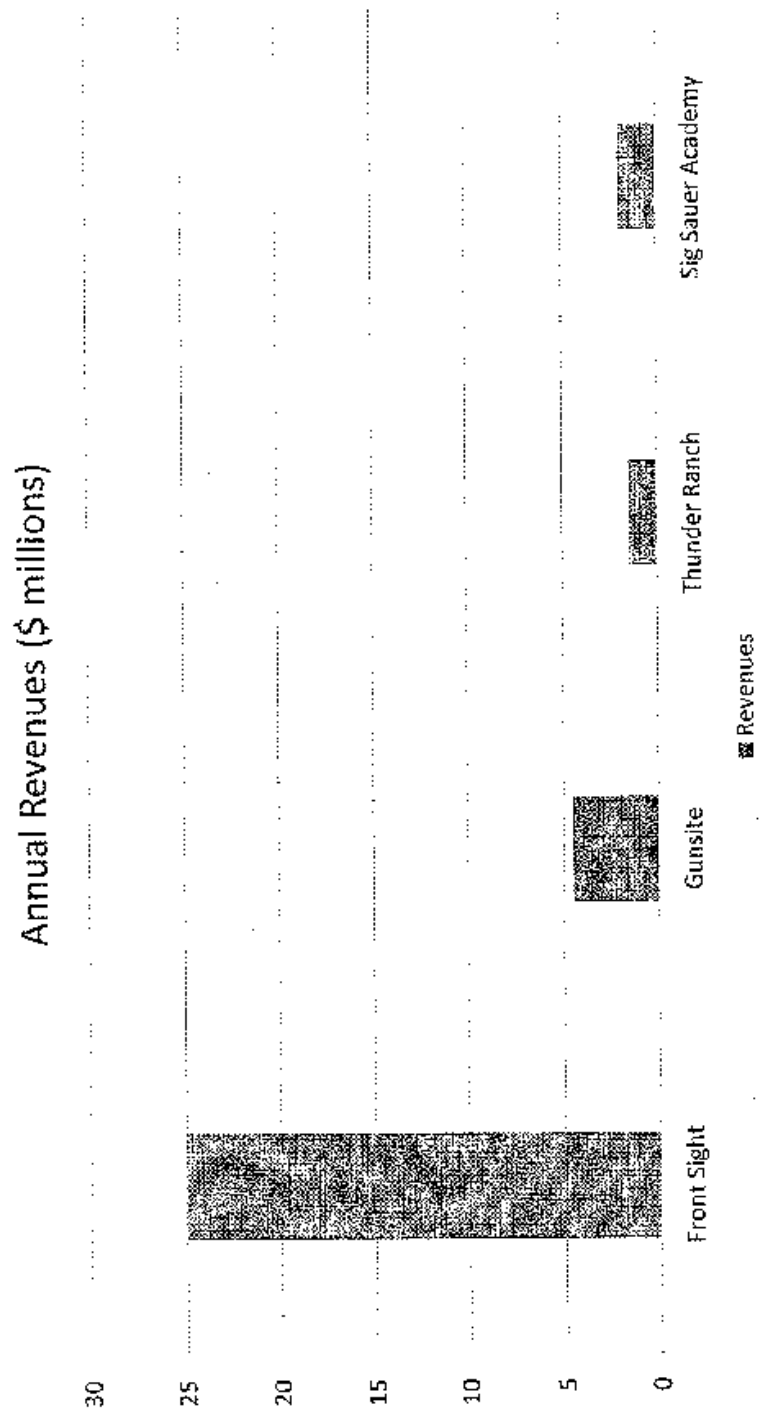


* 25,000,000 members of the RCI vacation club network could exponentially increase this student growth

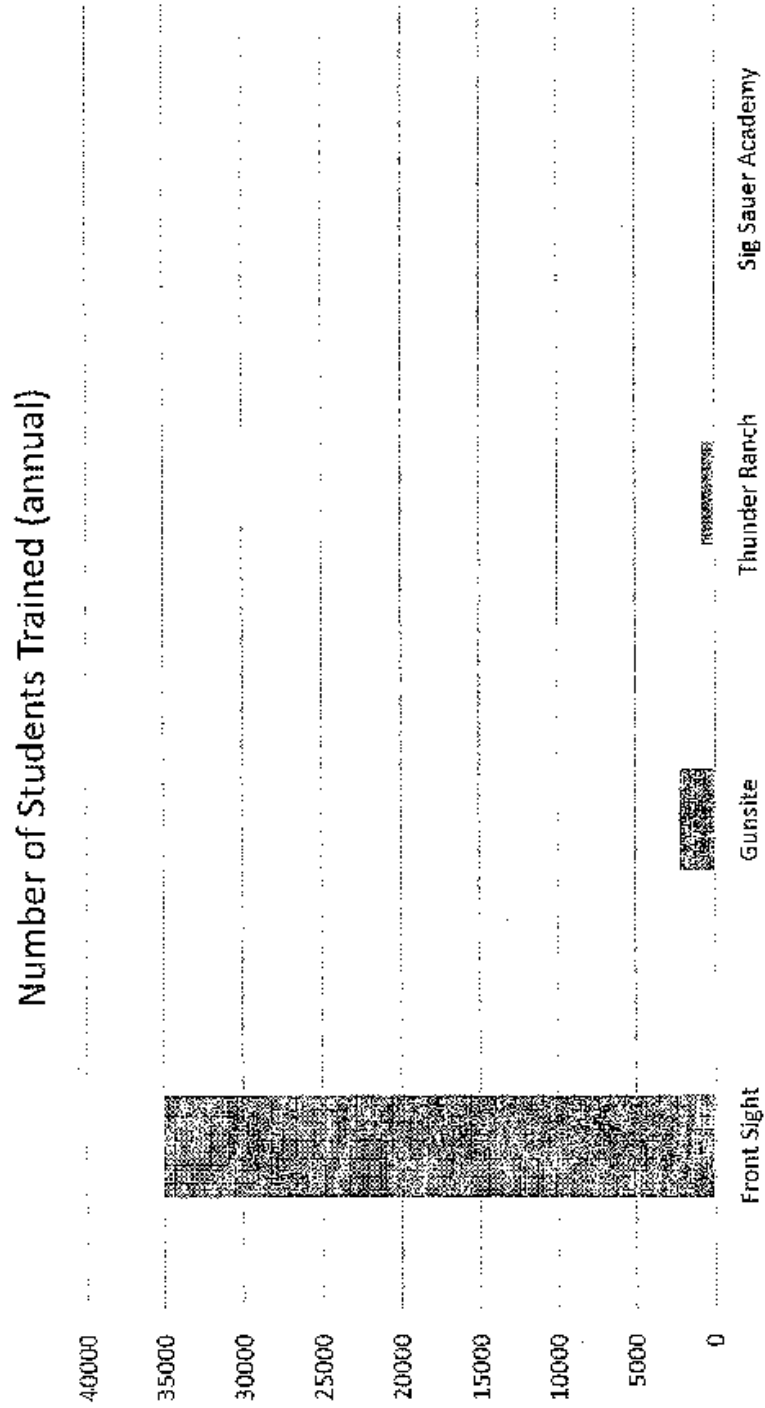
COMPETITION

- Only four nationally recognized training organizations within the United States:
 1. Front Sight (Las Vegas, Nevada)
 2. Gunsite (Paulden, Arizona)
 3. Thunder Ranch (Lakeview, Oregon)
 4. Sig Sauer Academy (Exeter, New Hampshire)

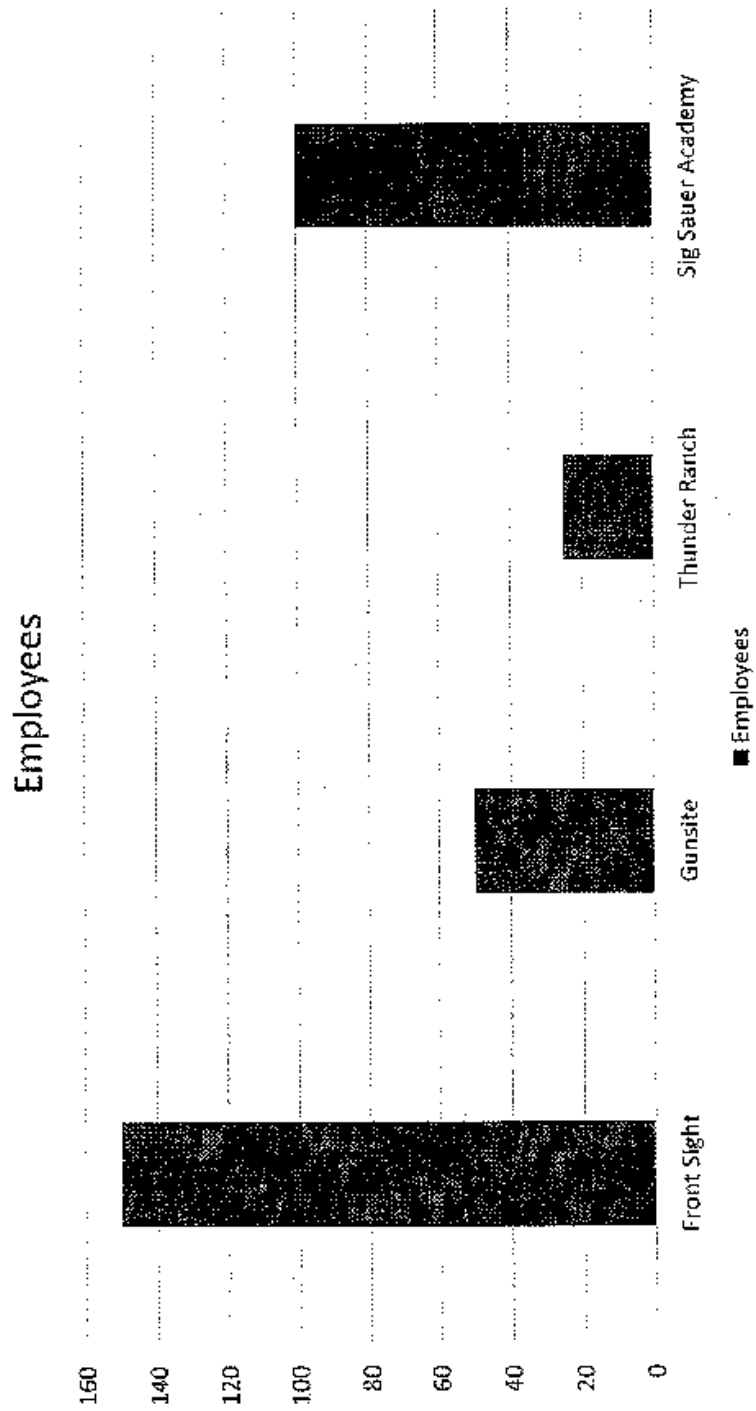
COMPETITOR COMPARISON - REVENUES



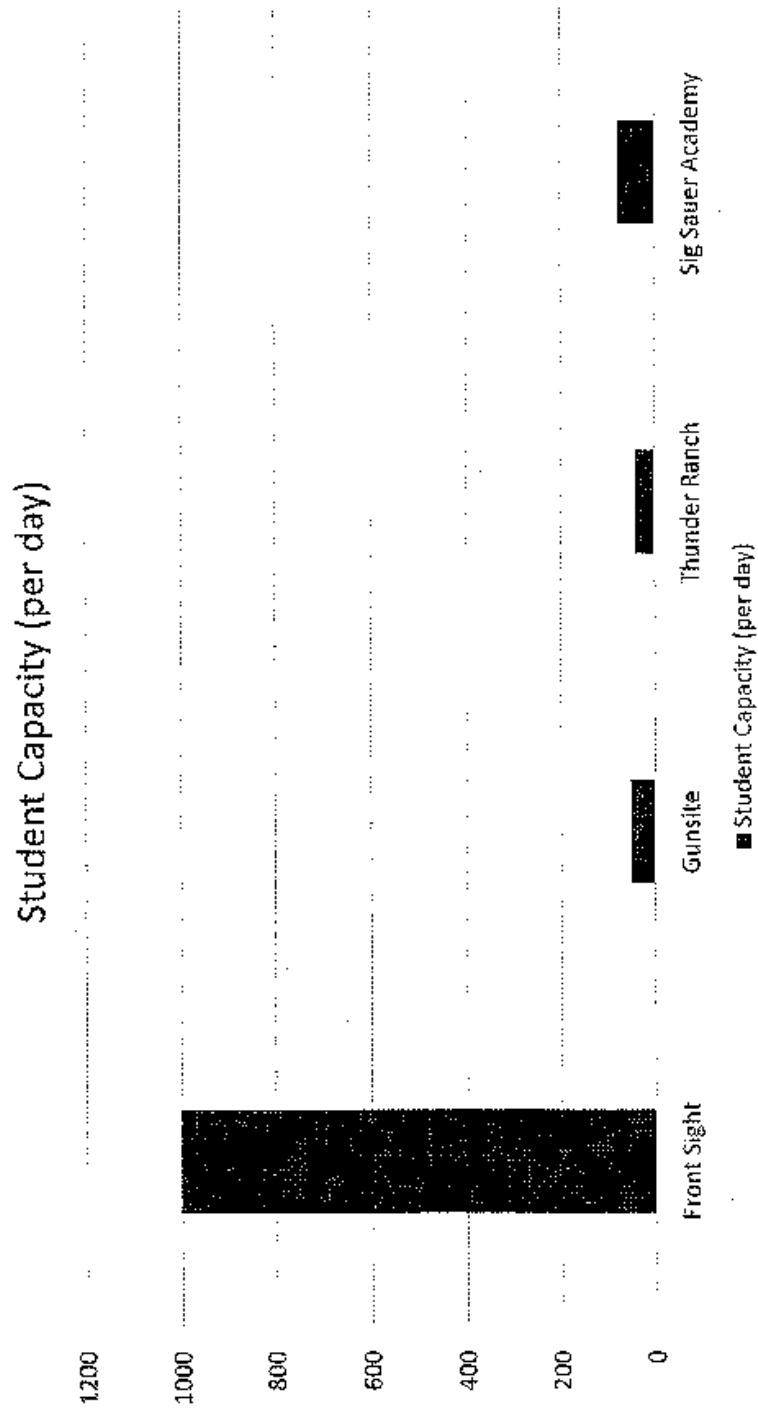
COMPETITOR COMPARISON – STUDENTS TRAINED



COMPETITOR COMPARISON - EMPLOYEES



COMPETITOR COMPARISON – STUDENT CAPACITY



FINANCIAL PROJECTIONS 5-YEAR PRO FORMA

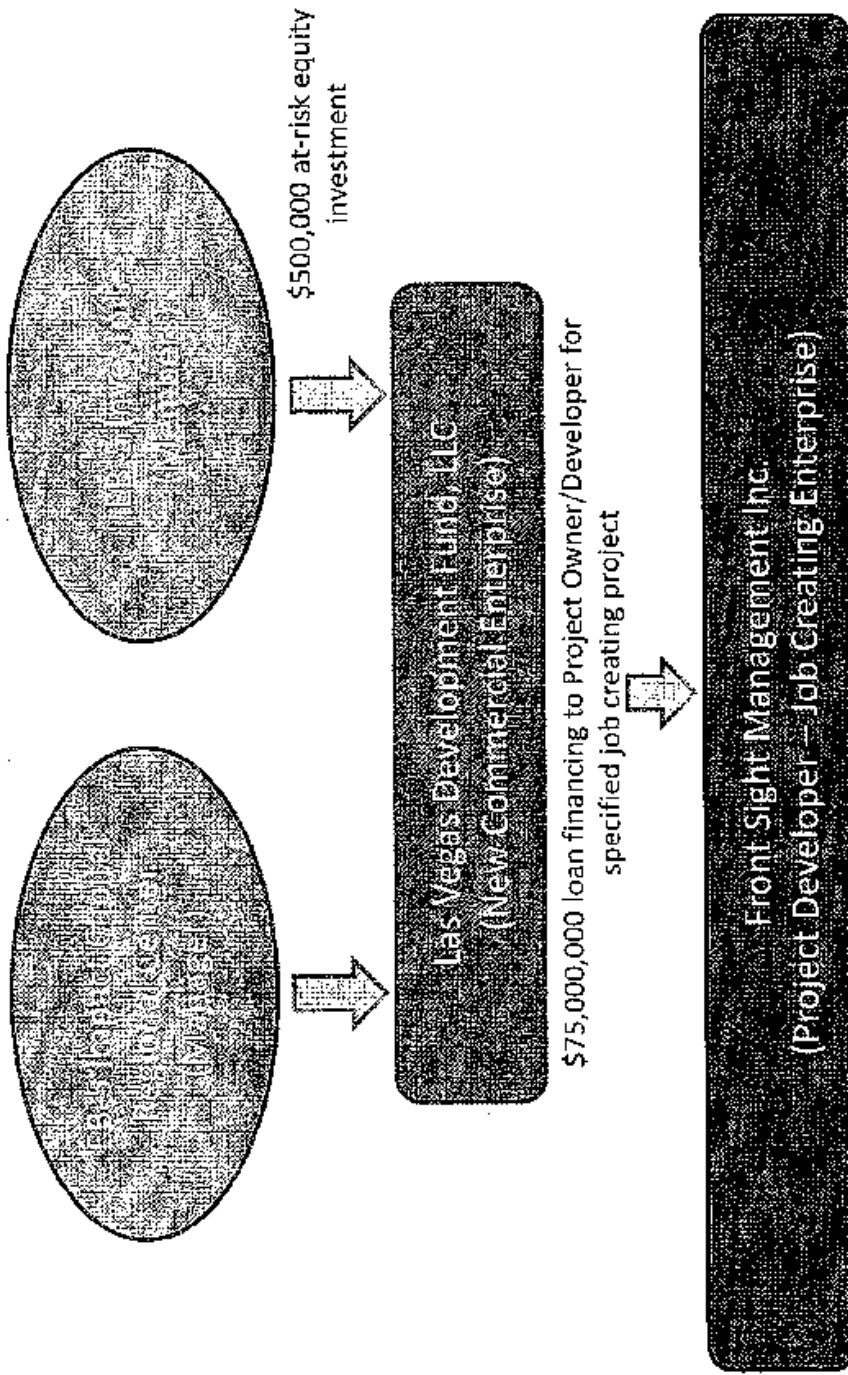
	Total Present Value	Pre-Sales	Year 1	Year 2	Year 3	Year 4	Year 5
Gross Revenue	592,080,350	26,430,915	90,679,017	156,907,939	180,458,320	85,565,086	102,644,887
Operating Expenses	255,625,522	17,473,000	32,632,674	53,967,504	68,590,360	48,693,585	57,462,028
Net Income	336,454,828	8,957,915	58,046,339	102,940,434	111,867,960	36,871,500	45,182,859
Profit Margin	56.8%	33.9%	64.0%	65.6%	62.0%	43.1%	44.0%

- Gross Revenue averages 14% annual growth
- Net Income averages 10% annual growth
- Average Profit Margin exceeds 50%
 - Significant opportunity for future growth

EB-5 VISA PROGRAM

- The EB5 Visa Program has been in existence since 1990
- In 2013, almost \$5 Billion of EB5 funds came into the US, and over 80% of that was from China
- EB5 steps:
 1. Chinese investor must invest at least US \$500,000 into a new project in the US that will create 10 full-time jobs for two years
 2. Submit I-526 application form to US Citizenship & Immigration Service (USCIS)
 3. Upon approval of I-526, USCIS issues a conditional green card to Chinese investor
 4. Chinese investor moves to the USA for at least two years while the 10 new jobs are created
 5. After two years, Chinese investor submits I-829 form to remove conditions and receive permanent green card

PROJECT INVESTMENT STRUCTURE



EB-5 FUNDING

- Las Vegas Development Fund LLC ("Fund") will raise \$75 million USD in EB-5 Funding.
- Fund will lend the \$75 million ("Loan") to the Developer for a 5-year term (subject to a two year extension).
- Loan will be secured by a senior first lien on the entire Front Sight project (existing and future); and all net revenues from the operation of Project. There will be no other debt on the property.
- EB5 investors will be first in line to receive all proceeds from the sale of the timeshare units and the operating revenues of the Project.
- All investors will receive, from the sale of the timeshare units and the operational revenues of the Project, their \$500,000 EB investment plus a 1% annual interest rate at the 5-year maturity (subject to a two-year extension).

EB-5 Investment

5-Year Term

Secured by Project

Exit Strategy

Investment Return

JOB CREATION

TEA

- Project is in a Targeted Employment Area ("TEA")
- Reduced \$500,000 level for each investor. The government TEA designation letter is on the next slide.
- Each investor who puts \$500,000 into the Project must account for 10 full-time jobs for a period of two years
- Detailed economic impact analysis by world-famous economist, Professor Sean Flynn, PhD from Berkeley and author of best selling economics textbooks and treatises
 - 1,822.7 total jobs created
- This project will have at least a **21% job surplus**, as 1,500 jobs needed to support 150 EB-5 investors

Jobs Created

Surplus Jobs

TEA DESIGNATION LETTER

INTERNATIONAL
COMMUNITY
DEVELOPMENT
DIRECTOR
WILLIAM D. ANDERSON
CHIEF ECONOMIST



REPRESENTATIVE
SOCIETY
MEMBER

June 2, 2013

Department of Homeland Security
U.S. Citizenship and Immigration Services (USCIS)
California Service Center
25009 Avila Road, Suite 200
Cajon Mills, CA 92677

To Whom It May Concern:

Section 264.6(b) of Title 8, Code of Federal Regulations (CFR) governing alien employment
immigrant work permits under the USCIS Administrative Process (I-485) requires that
authorities in the state government of any state of the United States, to designate a particular
individual, or group of individuals, as a "Targeted Employment Area (TEA)". For the purposes of
the employment process (I-485) visa program, to qualify, any such geographic or political
designations must either be a county or be a town with a population of 150 persons or more of the national average.

The designation of Targeted Employment Areas in the State of Nevada has been delegated to the
Nevada Department of Employment, Training, and Rehabilitation. Accordingly, this agency is
the authorized entity in Nevada to designate Targeted Employment Areas under 8 CFR
264.6(b)(6).

Under that authority, I hereby certify that the entire west of New County, Nevada, for purposes
of alien employment visas remains a Targeted Employment Area due to the entire area in New
County being rural.

Sincerely,

William D. Anderson
Chief Economist
Department of Employment, Training, and Rehabilitation

cc: IHS Impact Advisory LLC

501 E. Third St., Carson City, Nevada 89703 • (775) 682-2048 • Fax (775) 682-2048
www.ihad.com

DEVELOPMENT SCHEDULE*

31- MONTH PROJECT

Front Sight Resorts Development Project	703 Days
Condos and Retail	471 Days
Patriot Pavilion	440 Days
RV Resort	294 Days
Phase 3 Ranges	390 Days
Infrastructure Improvement	703 Days
Total Development Time	31 Months

*Infrastructure development (grading and water wells) started in March 2014

SENATOR DEAN HELLER SUPPORT LETTER

DEAN HELLER
U.S. SENATOR
WASHINGTON, DC 20540

UNITED STATES SENATE
DEAN HELLER, SEN. D-NV
WASHINGTON, DC 20540

March 16, 2014

Mr. Michael G. Hernandez
Chief Operating Officer
Front Range
1 Broad Street Road
Palm Springs, Nevada, 89311

Dear Mr. Hernandez:

I am pleased to offer this letter in support of your application to the United States Citizenship and Immigration Service (E-5 Visa Program). Having visited your facility, I am well aware of the viability of the Front Range project and the potential that is less for a strong economic impact on the city of Palmyra and on rural Clark County.

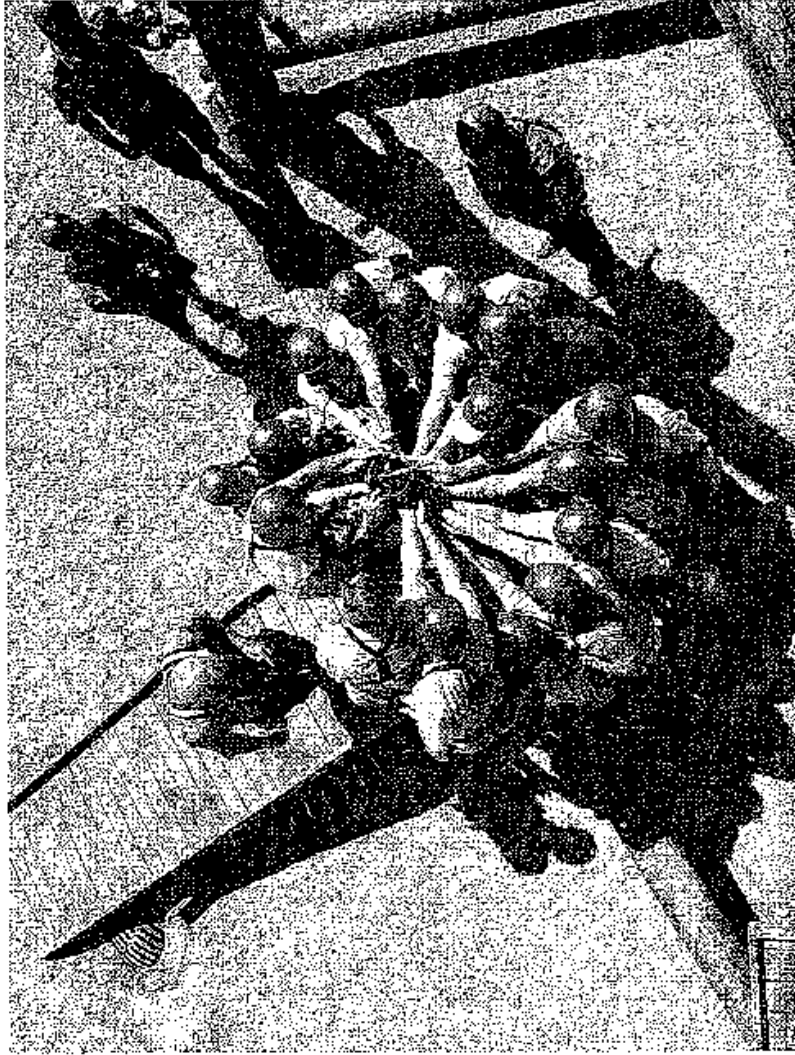
The state of Nevada has been among the hardest hit in recent years and our state employment numbers are staggering. As you are I believe, Clark County is facing severe unemployment and underemployment. An influx of foreign investment capital through the E-5 Visa Program will create 10000 jobs in Palmyra, Nevada, E-5 Visa Program, and a number of additional, and more than double its full-time employment. In addition, the new development and expansion will create thousands of temporary jobs, as well as additional direct and indirect jobs in southern Nevada and Clark County.

I encourage you to do that you have accomplished thus far and for your commitment and dedication and only to the positive growth of the economy in Palmyra and Clark County and the surrounding area. I am confident that you will bring a well being of the industry and families that will most certainly benefit.

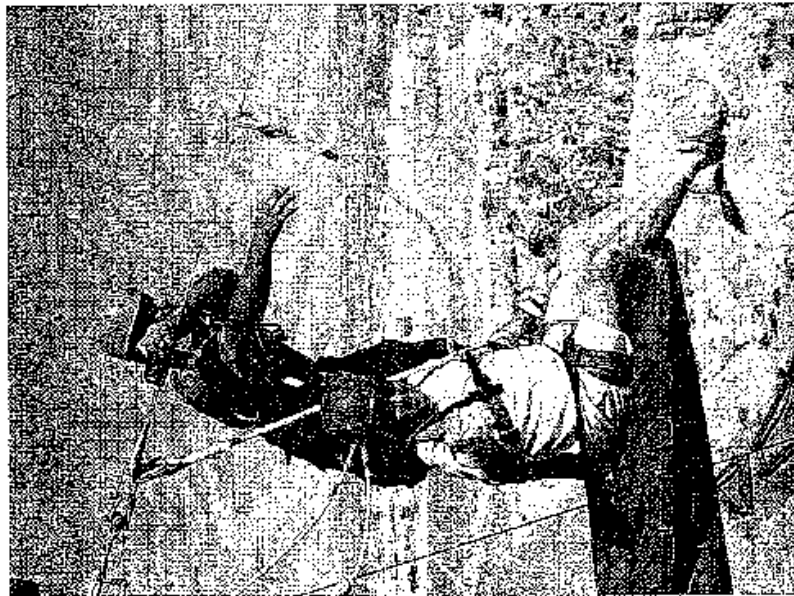
Sincerely,

Dean Heller
United States Senator

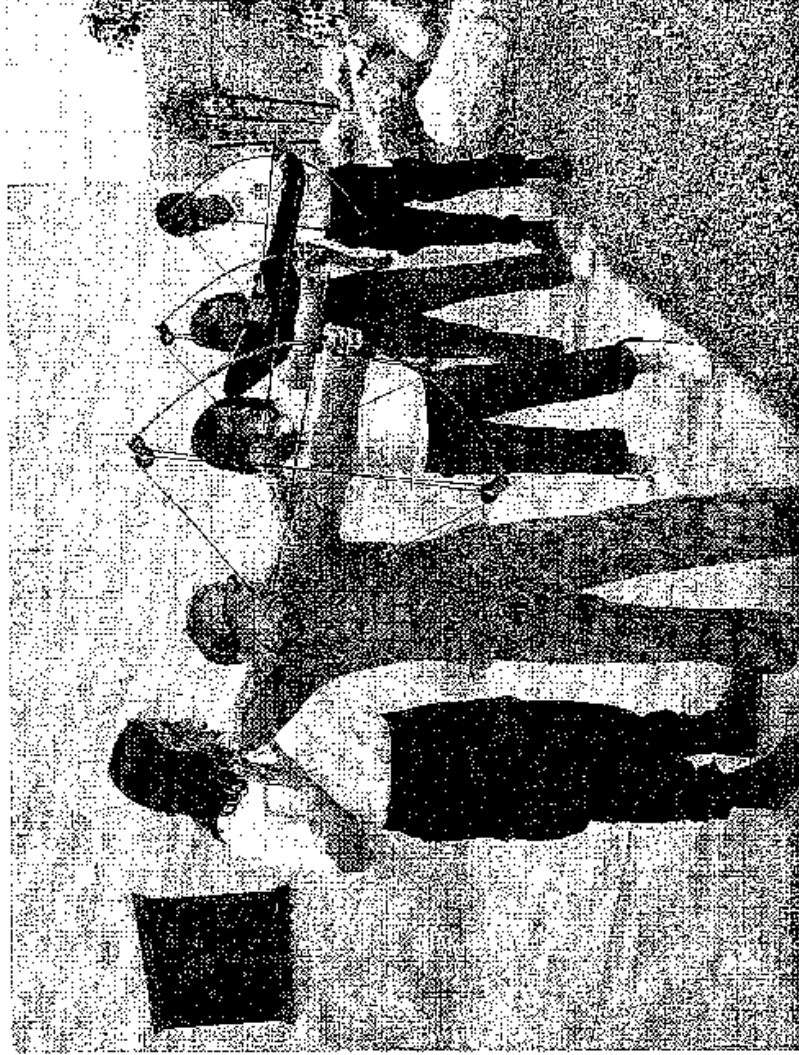
Youth Rope & Rappel Course



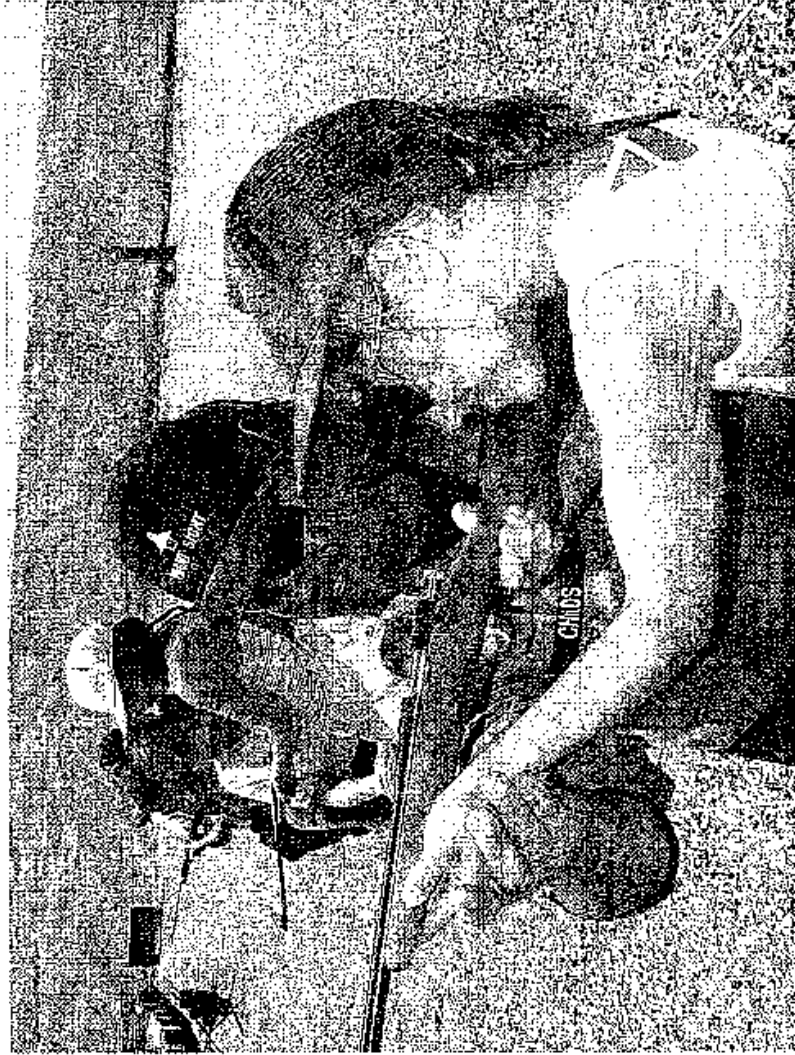
Zipline Excitement



Archery Class



Children's Rifle Training



Handgun Self-Defense Training



32

FS 04620

High Ropes Course



Advanced Firearms Training



34

FS 04622

Key Personnel: Front Sight



Dr. Ignatius Piazza is the Founder and President of Front Sight Management Inc. and the Founder and Director of the renowned FSFTI. Dr. Piazza has been in the firearms training industry for over 20 years. Dr. Piazza holds a Bachelor of Science from California State University Hayward and a Doctor of Chiropractic from Palmer College of Chiropractic West.

Michael G. Meacher
COO & Vice
President

Mr. Meacher is the Chief Operating Officer, and was the Resort Development Consultant to Front Sight Management from 1996 to 2010. He holds a Doctorate of Dental Surgery and Bachelor of Science from University of Southern California.

Brad Ackman
Operations Manager

Mr. Ackman has been working as the Operations Manager for Front Sight Management Inc. for the past 17 years. He is also a Primary Lecturer at FSFTI. Mr. Ackman holds a Bachelor of Science and a Master of Science in Geology from Southern Methodist University in Dallas, Texas.

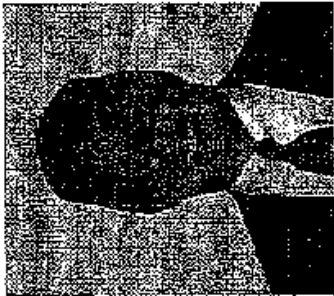
William Kapeles
Operations Manager

Mr. Kapeles is the Operations Manager for Front Sight Management Inc. Mr. Kapeles also works as the Senior Range Master at the FSFTI. Mr. Kapeles is certified as one of thirteen Handgun Combat Masters in the world. Mr. Kapeles holds a Bachelor of Science from Montana State University.

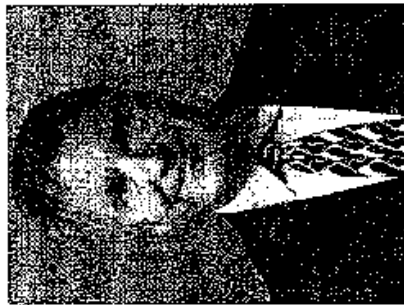
William Cookston
Operations Manager

Mr. Cookston is the Operations Manager of Front Sight Management Inc. Mr. Cookston is also the Senior Rangemaster at the FSFTI. Mr. Cookston is a Certified Electrical Technician and a graduate of Realtor Institute specializing in risk reduction and property management.

Key Personnel: Las Vegas Development Fund LLC



Robert Dziubla is the **President and CEO** of EB Impact Capital Regional Center, LLC; and of Kenworth Capital, Inc. Previously, he was the Vice-Chairman and General Counsel of Guggenheim Sovereign LLC, a joint venture with Guggenheim Partners, a \$170 billion global financial services firm. Mr. Dziubla holds a B.A. and JD from Northwestern University, MA from University of Chicago and LL.M. (Asian Law) from University of Washington.



Jon Fleming is the **Senior Vice President** of EB Impact Capital Regional Center, LLC and has over 32 years of business experience as an investor, lender and investment banker of commercial real estate properties. Mr. Fleming also serves as the President of Legacy Realty Capital Inc. (LRC), a company established to acquire and oversee non-performing commercial real estate notes and properties. Mr. Fleming holds a Bachelor of Arts degree in Economics from the University of Western Ontario located in London, Ontario, Canada.

DISCLAIMERS

- This PowerPoint presentation is for informational purposes only and shall not constitute an offering of securities. Any offering of securities to interested investors will be made only pursuant to formal documents related to this Project, including:
 - ✓ Business Plan
 - ✓ Economic Impact Analysis
 - ✓ Private Placement Memorandum (“PPM”)
 - ✓ Operating Agreement
 - ✓ Subscription Agreement
 - ✓ Escrow Agreement
- All investors are encouraged to obtain formal advice from their professional advisors such as lawyers and accountants.

EXHIBIT 18

EXHIBIT 18

CONFIDENTIAL

From: Mike Meacher
To: "Robert Dziubla"
Cc: Jon Fleming (jfleming@EB5impactcapital.com)
Bcc: Jonathan Piazza
Subject: RE: Loan agreement / budget update
Date: Friday, October 16, 2015 6:37:00 PM

Dear Bob and Jon,

The terms that I laid out are exactly what we have agreed to in every meeting or discussion we have had over the last three years. Please create a document that reflects this agreement.

Mike

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Friday, October 16, 2015 5:54 PM
To: Mike Meacher
Cc: Jon Fleming
Subject: RE: Loan agreement / budget update

Dear Mike,

We certainly are aiming to achieve the \$25 minimum raise by 12/31, but it may go to Jan 15. It won't be for lack effort though.

Re the loan agreement, has Front Sight ever done a commercial real estate construction loan?

Thanks,

Bob

----- Original message -----
From: Mike Meacher <meacher@frontsight.com>
Date: 10/16/2015 3:46 PM (GMT-08:00)
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>
Cc: Jon Fleming <jfleming@EB5impactcapital.com>
Subject: Loan agreement / budget update

Thanks Bob and Jon,

Keep up the good work on the marketing.

Per your estimate, we are expecting the first disbursement of \$25 million by the end of the year. Please don't disappoint us. We are gearing our initial design and infrastructure plans to this schedule.

The NVDRE is in its final stages for submittal. Dr. Piazza has requested a conference call with Letvia, our attorney, for early next week and wants her to go

FS 08064

CONFIDENTIAL

over each paragraph and explain what they mean in layman's terms so he fully understands what we are agreeing to and whether or not we should make any changes to the submittal.

Regarding the construction loan document, you need to significantly simplify it to reflect what we have always agreed upon. We have previously agreed to 3 disbursements of \$25 million each into Front Sight's account to use as we see fit in the overall construction, development, marketing and operation of Front Sight. The interest rate will be 6% charged on the money we draw down in those three disbursements. These payments are interest only for a minimum term of 60 and a maximum term of 84 months. We are responsible for building the project as marketed, using the contractor of our choice, making payments from our FS account after invoices are submitted for verification of the work/services completed to our satisfaction. This loan is collateralized by the real estate on which the improvements such as the condos, RV sites, hotel and classroom are being built. We do not want or need multiple hands in the process or a 70+ page construction loan agreement. We are prepared to sign a simplified and revised document that reflects what we have previously agreed to, nothing else. Please revise it for our approval. Upon receipt and acceptance we will provide the final budget payment of \$40,500.

Mike
Meacher@frontsight.com
702-425-6550

From: Robert Dziubla [<mailto:rdziubla@eb5impactcapital.com>]
Sent: Friday, October 16, 2015 11:58 AM
To: Mike Meacher
Cc: Jon Fleming
Subject: Loan agreement / budget update

Dear Mike,

I haven't heard anything from you since last Friday when I sent over the loan agreement, so apparently it has been acting as a terrific soporific. ☺ We really do look forward to getting your comments when able so that we can then have the lawyers finalize that agreement and prepare the associated documents (mortgage, promissory note, etc.), as the investors have been asking if we have the loan agreement in place.

Per your request, please find attached an updated budget & reconciliation. In sum, Front Sight has now paid \$241,730 against a total budget commitment of \$282,230. Therefore, we are expecting the final payment of \$40,500 at the end of this month.

Marketing update:

FS 08065

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1. Our agent for Russia, Ukraine and Kazakhstan is still traveling in the region and is scheduled to return over this weekend. He has 3 investors lined up and another 10 or more in the pipeline. Currently, all of the investors are working with our agent to figure out how to get their money into our US escrow, as local currency restrictions are limiting them to \$10k outbound per year.
2. Sinowel has about 5 investors lined up for this project and largely ready to go, with several more being "warmed up," but they all are awaiting confirmation on our having a loan agreement in place and that the NVDRE has approved the timeshare project. Please do advise status of this latter item. Sinowel's IT department is loading the Front Sight project onto their China domestic website and also linking our EB5 Impact Capital website to Sinowel's. Sinowel is planning a 3-week roadshow from Nov. 8 – 21, covering Beijing, Shanghai and Wuhan. FYI, the investor presentations generally happen only on the weekend days, as the investors are busy working during the week.
3. Our second China agent is currently traveling this week and for the next several weeks to the following cities to recruit local sub-agents and to educate them and their interested investors about the Front Sight project: Xian, Chengdu, Chongqing, Wuhan, Changsha, Kunming, Zhengzhou, Hefei, Nanning and Nanchang. They are planning to have 50 investors signed up by January 15.
4. Our third China agent, which is based in Hangzhou, and with offices in Beijing, Shanghai and Guangzhou is completing its internal training / education on the FS project. Their financial advisors will start marketing next week and anticipate having up to 20 investors by year-end.
5. India – we have three agents signed up. One agent has sourced the first investor who went into escrow on September 30, and the same agent has 2 more investors showing high interest. The other two agents are doing their marketing, but they too are asking about the loan documents and timeshare approval.
6. Brazil – we are meeting with our Brazil agent here in the US in a couple of weeks when they are here, and they may want to visit Front Sight. After that, Jon or Bob will attend roadshows in Brazil.
7. Attorney / agent – we have engaged a US immigration lawyer-agent, who is starting the marketing of the FS project to foreign students attending college in the USA (especially southwestern US).
8. IIUSA – Bob is attending the IIUSA (industry trade group) annual marketing meeting being held in Dallas next week, where he will meet 10 – 20 sub-agents who are being brought by a Shanghai-based immigration lawyer who we have on retainer.

Thanks,

FS 08066

CONFIDENTIAL

Bob

<<...>>

FS 08067

EXHIBIT 19

EXHIBIT 19

1 **RRFP**
2 ANTHONY T. CASE, ESQ.
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4 tcase@farmercase.com
5 KATHRYN HOLBERT, ESQ.
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15 keith.greer@greerlaw.biz
16 **GREER AND ASSOCIATES, A PC**
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18 San Diego, CA 92127
19 Telephone: (858) 613-6677
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21 Attorneys for Defendants
22 LAS VEGAS DEVELOPMENT FUND LLC, EB5
23 IMPACT CAPITAL REGIONAL CENTER LLC,
24 EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
25 JON FLEMING and LINDA STANWOOD

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

28 FRONT SIGHT MANAGEMENT LLC, a) CASE NO.: A-18-781084-B
Nevada Limited Liability Company,) DEPT NO.: 16
30 Plaintiff,)
31 vs.) **DEFENDANT, EB5 IMPACT ADVISORS,**
32) **LLC RESPONSES TO PLAINTIFF'S**
33) **THIRD SET OF REQUESTS FOR**
34) **PRODUCTION OF DOCUMENTS**
35 LAS VEGAS DEVELOPMENT FUND LLC,)
36 et al.,)
37 Defendants.)
38)
39)
40)

41 **PROPOUNDING PARTY: Plaintiff, FRONT SIGHT MANAGEMENT LLC,**
42 **RESPONDING PARTY: Defendant, EB5 IMPACT ADVISORS, LLC**
43 **SET NO: THIRD**

1 **GENERAL OBJECTIONS**

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

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

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

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

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

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

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

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

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

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

12 **REQUEST NO. 97:**

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

16 //

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

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

7
8 DATED: August 14, 2019

FARMER CASE & FEDOR

9
10 /s/ Kathryn Holbert, Esq.

ANTHONY T. CASE, ESQ.

Nevada Bar No. 6589

11 tcase@farmercase.com

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Attorneys for Defendants

21 LAS VEGAS DEVELOPMENT FUND LLC.

22 EB5 IMPACT CAPITAL REGIONAL CENTER,

LLC, EB6 IMPACT ADVISORS, LLC, ROBERT

23 W. DZIUBLA, JON FLEMING and LINDA

24 STANWOOD

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CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRC P 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 RESPONSES TO PLAINTIFF'S THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

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

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

By:

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

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

Dated: October 3, 2019

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

EXHIBIT 20

EXHIBIT 20

844-889-8028



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- [About Us](#)
- [Contact Us](#)
- [FAQ](#)
- [Language:](#)

EB5 impact capital

Linda Stanwood

- [The EB-5 Program](#)

You are here: [Home](#) / [Our Team](#) / Linda Stanwood



Linda Stanwood

Senior Vice President

Ms. Stanwood is the Senior Vice President of EB Impact Capital Regional Center, LLC, having joined the company in January 2018. Previously, she practiced real estate finance law at the international law firm of Pillsbury Winthrop Shaw Pittman LLP where she represented national and California banks in major real estate development ~~that firms~~ across the western United States, including residential subdivisions, retail shopping centers, commercial developments and casinos. During her legal career, Ms. Stanwood also advised construction companies and major corporations on their construction contracting and leasing operations. From 1992 through 1998 she was General Counsel of Hazama USA Corporation, advising Hazama and its parent company, Hazama Corporation of Japan on their U.S. real estate development and construction operations. Prior to that, Ms. Stanwood was a law professor at UCLA School of Law where she taught trial advocacy and legal research and writing.

EB5 - Impact Capital

844-889-8028

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Incline Village, Nevada 89450

EXPLORE

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- [EB-5 Program](#)
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English ▼



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NEO
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
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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,

vs.

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

Defendants.

AND ALL RELATED COUNTERCLAIMS.

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

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF
LAW, AND ORDER DENYING
DEFENDANT LAS VEGAS
DEVELOPMENT FUND LLC'S
MOTION TO DISSOLVE
TEMPORARY RESTRAINING
ORDER AND TO APPOINT A
RECEIVER**

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Order Denying Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary Restraining Order and to Appoint a Receiver was entered by the Court in the above-captioned

///
///
///
///

1 action on the 23rd day of January, 2020, a true and correct copy of which is attached hereto.

2 DATED this 23rd day of January, 2020.

3 **ALDRICH LAW FIRM, LTD.**

4 /s/ John P. Aldrich

5 John P. Aldrich, Esq.

6 Nevada Bar No. 6877

7 Catherine Hernandez, Esq.

8 Nevada Bar No. 8410

9 7866 West Sahara Avenue

10 Las Vegas, Nevada 89117

11 Telephone: (702) 853-5490

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13 *Attorneys for Plaintiff/Counterdefendants*

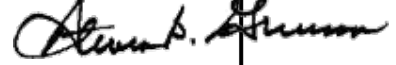
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 23rd day of January, 2020, I caused the foregoing
3 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
4 **ORDER DENYING DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S**
5 **MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO APPOINT**
6 **A RECEIVER** to be electronically filed and served with the Clerk of the Court using Wiznet
7 which will send notification of such filing to the email addresses denoted on the Electronic Mail
8 Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List,
9 to the following parties:

10 Anthony T. Case, Esq.
11 Kathryn Holbert, Esq.
12 FARMER CASE & FEDOR
13 2190 E. Pebble Rd., Suite #205
14 Las Vegas, NV 89123

15 C. Keith Greer, Esq.
16 16855 West Bernardo Drive, Suite 255
17 San Diego, CA 92127
18 *Attorneys for Defendants*

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



1 **FFCL**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
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5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff/Counterdefendants*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

10 Plaintiff,

11 vs.

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

14 Defendants.
15

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER DENYING DEFENDANT
LAS VEGAS DEVELOPMENT FUND
LLC'S MOTION TO DISSOLVE
TEMPORARY RESTRAINING
ORDER AND TO APPOINT A
RECEIVER

16 AND ALL RELATED COUNTERCLAIMS.
17

18 This matter having come before the Court on September 20, 2019 and November 26,
19 2019 on Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary
20 Restraining Order and to Appoint Receiver, John P. Aldrich, Esq. appearing on behalf of
21 Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer, Esq., appearing on behalf of
22 Defendants, the Court having reviewed the pleadings on file herein, having heard oral argument
23 of the parties through their respective counsel, this Court makes the following Findings of Fact
24 and Conclusions of Law.

JAN 10 2020

1 Insofar as any conclusion of law is deemed to have been or include a finding of fact,
2 such a finding of fact is hereby included as a factual finding. Insofar as any finding of fact is
3 deemed to have been or to include a conclusion of law such is included as a conclusion of law
4 herein.

5 **FINDINGS OF FACT**

6 The Court makes the following Findings of Fact based on the evidence presented:

7 1. In Section IIB of Defendant/Counterclaimant Las Vegas Development Fund, LLC’s
8 (“LVDF”) Motion to Dissolve Temporary Restraining Order and Appoint a Receiver,
9 Defendant LVDF asserts thirteen breaches of the Construction Loan Agreement
10 (“CLA”):

- 11 a. Alleged Breach #1: Improper Use of Loan Proceeds – CLA §1.7(e) (Motion,
12 p. 10);
- 13 b. Alleged Breach #2: Failure to Provide Government Approved Plans – CLA
14 §3.2(b) (Motion, p. 10);
- 15 c. Alleged Breach #3: Failure to Timely Complete Construction – CLA §5.1
16 (Motion, p. 10);
- 17 d. Alleged Breach #4: Material Change of Costs, Scope or Timing of Work –
18 CLA §5.2 (Motion, p. 11);
- 19 e. Alleged Breach #5: Refusal to Comply Regarding Senior Debt – CLA §5.27
20 (Motion, p. 11);
- 21 f. Alleged Breach #6: Failure to Provide Monthly Project Costs – CLA §3.2(a)
22 (Motion, p. 11);

- 1 g. Alleged Breach #7: Failure to Notify of Event of Default – CLA §5.10
2 (Motion, p. 11);
- 3 h. Alleged Breach #8: Refusal to Allow Inspection of Records – CLA §5.4
4 (Motion, p. 12);
- 5 i. Alleged Breach #9: Refusal to Allow Inspection of the Project – CLA §3.3
6 (Motion, p. 12);
- 7 j. Alleged Breach #10: Failure to Provide EB-5 Information – CLA §1.7(f)
8 (Motion, p. 12);
- 9 k. Alleged Breach #11: Non Payment of Default Interest – CLA §1.2 (Motion, p.
10 12);
- 11 l. Alleged Breach #12: Non Payment of Legal Fees – CLA §8.2 (Motion, p. 12);
12 and
- 13 m. Alleged Breach #13: Failure to Comply with Applicable Laws (CLA §5.13)
14 and Failure to Give Written Notice of Criminal Complaint (CLA §5.14)
15 (Motion, p. 13).

16 2. The first allegation of breach focuses on the alleged misuse of loan proceeds by
17 Plaintiff/Counter-Defendant, Front Sight Management, LLC (Front Sight). However,
18 in its Opposition to Defendant/Counter-Claimant LVDF's Motion to Dissolve the
19 TRO and Appoint a Receiver, Front Sight supplied evidence to establish project cost
20 and expenditures which exceed the loan amounts advanced by LVDF.

21 3. There are four (4) paragraphs of the Construction Loan Agreement that relate to loan
22 proceeds. They are as follows:
23
24

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

2
3 (e) Borrower shall use the proceeds of the Loan solely for the purpose
4 of funding directly, or advancing to Affiliates to pay, the costs of the Project, **in**
5 **accordance with the terms and conditions of this Agreement,** as set forth in the
6 Budget and the Project documents submitted to, and approved by, USCIS.
7

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

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

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

40 (Emphases added.)

- 41 4. Exhibit 47 to the Evidentiary Hearing Exhibits, Front Sight's "Response to Notice of
42 Default dated July 30, 2018," shows project costs and expenditures well in excess of
43 \$6.3 million LVDF advanced. In Exhibit C to that document, Front Sight provided

1 copies of QuickBooks monthly reports that showed the following Project costs and
 2 expenditures:

TIME PERIOD	TOTAL
October 2015 – December 2015	\$3,387,591.35
January 2016 – December 2016	\$7,466,570.24
January 2017 – December 2017	\$12,454,018.84
	\$23,308,180.43

3
 4
 5
 6 5. Exhibit 48 to the Evidentiary Hearing Exhibits is Front Sight’s “Additional Response
 7 to Notices of Default dated July 31, 2018, and August 24, 2018 and Initial Response
 8 to Notice of Default dated August 28, 2018.” In that exhibit, Front Sight provided to
 9 Defendant Dziubla a multitude of documents showing the following expenses which
 10 were paid by Front Sight between the closing of the loan in October 2016 and June
 11 30, 2017:

EXPENSE CATEGORY	TOTAL
Reimbursable construction costs prior to the closing date of the Construction Loan Agreement	\$994,336.56
Construction costs from the closing date of the Construction Loan Agreement to June 30, 2017	\$1,031,728.10
Class Action lien payoff as of the time of closing of the Construction Loan Agreement	\$551,871.50
Class action lien pay-down prior to the closing date of the Construction Loan Agreement	\$1,860,000.00
Holecek note paydown prior to the closing date of the Construction Loan Agreement	\$6,004,000.00
Holecek note paydown from the closing date of the Construction Loan Agreement to June 30, 2017	\$1,422,000.00
Project legal fees	\$81,551.25
Fees Paid to Chicago Title in connection with original closing	\$9,217.01
EB5 Impact Advisor fees	\$244,730.00
Fees paid to US Capital Partners evidencing efforts to secure “Senior Debt” prior to securing construction line of credit from Morales Construction	\$62,500.00
Project consulting fees	\$82,550.00
	\$12,344,484.42

1 6. Adding construction costs prior to closing with construction costs from closing to
2 June 30, 2017, plus the class action lien payoff as of the closing date of the CLA,
3 Front Sight's expenses far exceed the US\$2.625M in EB5 funds delivered on or
4 before June 30, 2017.

5 7. Exhibit 49 to the Evidentiary Hearing Exhibits is Front Sight's "EB-5 Documentation
6 and Additional Information for the Period July 1, 2017, through October 31, 2018
7 Delivered Pursuant to Section 5.10(e) of the Construction Loan Agreement." In that
8 exhibit, Front Sight provided to Defendant Dziubla several hundred additional pages
9 of documents showing the following expenses which were paid by Front Sight:

EXPENSE CATEGORY	TOTAL
Construction costs from June 30, 2017, through and including July 1, 2018	\$2,088,490.00
Holecek note paydown from June 30, 2017, through and including July 1, 2018	\$1,896,000.00
Project legal fees from June 30, 2017, through and including July 1, 2018	\$14,116.00
Construction costs from July 1, 2018, through and including October 30, 2018	\$402,621.00
Holecek note paydown from July 1, 2018, through and including October 30, 2018	\$632,000.00
Project legal fees from July 1, 2018, through and including October 30, 2018	\$6,984.00
Construction costs from September 6, 2016, through and including August 24, 2018 (commercial revolving charge account of Front Sight established with Home Depot)	\$66,173.67
Construction costs from October 11, 2016, through and including July 13, 2018 (charged to the Visa credit card account of Front Sight established with City National Bank)	\$43,212.07
Construction costs from August 30, 2016, through and including February 20, 2018 (charged to the Premier Rewards Gold charge and credit card account of Front Sight established with American Express)	\$92,868.00
	\$5,242,464.74

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23 8. Based on this uncontroverted evidence, the Court finds Front Sight's expenses on the
24 Project far exceed the amount of the loan from Defendant LVDF.

1 9. As to the fourth breach alleged by Defendant/Counterclaimant LVDF, the alleged
2 material change in size, scope, and timing of the project, it appears that the size of the
3 classroom was reduced but not the overall size of the facility, and therefore, the Court
4 finds that there is an issue of fact as to this alleged breach of the CLA.

5 10. Regarding the second, third, and fifth through thirteenth alleged breaches, as asserted
6 by Defendant/Counterclaimant LVDF, the parties asserted multiple competing factual
7 positions and made conflicting factual assertions regarding Defendant LVDF's
8 allegations of breach of the CLA. Based on the state of the evidence as of the date of
9 the hearing on the instant Motion, the Court finds that genuine issues of fact remain
10 as to the second, third, and fifth through thirteenth alleged breaches, as asserted by
11 Defendant/Counterclaimant LVDF.

12 **CONCLUSIONS OF LAW AND ORDER**

13 The Court makes the following Conclusions of Law:

14 1. Regarding alleged Breach #1, the Court concludes that Front Sight's expenses on
15 the Project far exceed the amount of the loan from Defendant LVDF has Defendant LVDF's
16 assertion that Front Sight improperly used loan proceeds is without merit, and consequently,
17 LVDF has failed to establish this alleged breach.

18 2. As to the second, third, and fifth through thirteenth alleged breaches, as asserted
19 by Defendant/Counterclaimant LVDF, the Court concludes that LVDF has not established that
20 Plaintiff is in breach of the Construction Loan Agreement, and consequently, LVDF is not
21 entitled to the relief it seeks by this Motion.

22 4. Regarding the fourth alleged breach, pertaining to the reduction in the size of the
23 Patriot Pavilion, because it appears that the size of the classroom was reduced but not the overall
24

1 size of the facility, creating an issue of fact as to this alleged breach, the Court concludes that
2 LVDF has not established that Plaintiff is in breach of the construction Loan Agreement, and
3 consequently, LVDF is not entitled to the relief it seeks by this Motion.

4 **ORDER**

5 **IT IS HEREBY ORDERED** that Defendant Las Vegas Development Fund LLC's
6 Motion to Dissolve Temporary Restraining Order and to Appoint Receiver is DENIED.

7 **IT IS SO ORDERED.**

8 DATED this 22nd day of January, 2020.

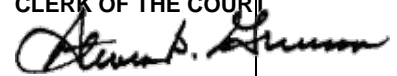
9
10 
11 DISTRICT COURT JUDGE
12 

13 Respectfully submitted by:

14 **ALDRICH LAW FIRM, LTD.**

15 

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



1 **NEO**
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2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
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5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff/Counterdefendants*

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

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

10 Plaintiff,

11 vs.

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

13 Defendants.
14 _____

15 AND ALL RELATED COUNTERCLAIMS.
16 _____

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

NOTICE OF ENTRY OF ORDER
ON STATUS CHECK REGARDING
DISCOVERY
RESPONSES/PLAINTIFF'S
MOTION TO COMPEL

17 PLEASE TAKE NOTICE that an Order on Status Check Regarding Discovery
18 Responses/ Plaintiff's Motion to Compel was entered by the Court in the above-captioned action

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1 on the 23rd day of January, 2020, a true and correct copy of which is attached hereto.

2 DATED this 23rd day of January, 2020.

3 **ALDRICH LAW FIRM, LTD.**

4 /s/ John P. Aldrich

5 John P. Aldrich, Esq.

6 Nevada Bar No. 6877

7 Catherine Hernandez, Esq.

8 Nevada Bar No. 8410

9 7866 West Sahara Avenue

10 Las Vegas, Nevada 89117

11 Telephone: (702) 853-5490

12 Facsimile: (702) 227-1975

13 *Attorneys for Plaintiff/Counterdefendants*

14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on the 23rd day of January, 2020, I caused the foregoing
16 **NOTICE OF ENTRY OF ORDER ON STATUS CHECK REGARDING DISCOVERY**
17 **RESPONSES/PLAINTIFF'S MOTION TO COMPEL** to be electronically filed and served
18 with the Clerk of the Court using Wiznet which will send notification of such filing to the email
19 addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not
20 included on the Electronic Mail Notice List, to the following parties:

21 Anthony T. Case, Esq.

22 Kathryn Holbert, Esq.

23 FARMER CASE & FEDOR

24 2190 E. Pebble Rd., Suite #205

Las Vegas, NV 89123

C. Keith Greer, Esq.

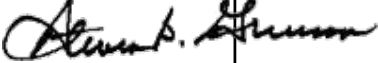
16855 West Bernardo Drive, Suite 255

San Diego, CA 92127

Attorneys for Defendants

/s/ T. Bixenmann

An employee of ALDRICH LAW FIRM, LTD.



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ORDER
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

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

Defendants.

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

ORDER ON STATUS CHECK
REGARDING DISCOVERY
RESPONSES/PLAINTIFF'S MOTION
TO COMPEL

AND ALL RELATED COUNTERCLAIMS.

This matter having come before the Court, on December 18, 2019 at 10:00 a.m. for a Status Check regarding Defendants' discovery responses and Plaintiff's Motion to Compel, John P. Aldrich, Esq. appearing on behalf of Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer, Esq., appearing by telephone on behalf of Defendants, the Court having reviewed the pleadings on file herein, having heard oral argument by the parties, and for good cause appearing therefore,

///

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

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED COUNTERCLAIMS.

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

MOTION FOR SUMMARY JUDGMENT
AS TO THE COUNTERCLAIMS
AGAINST VNV DYNASTY TRUST I
AND VNV DYNASTY TRUST II

HEARING REQUESTED

COME NOW Counterdefendants VNV DYNASTY TRUST I and VNV DYNASTY TRUST II (collectively “VNV Trust Defendants” or the “Trusts”), by and through their attorneys, John P. Aldrich, Esq., and Catherine Hernandez, Esq., of the Aldrich Law Firm, Ltd., and hereby move the Court for an order granting summary judgment in their favor as to all counterclaims against them.

The Court found that Front Sight produced evidence sufficient to show it expended more on the construction project at issue than the monies LVDF has advanced, thus refuting LVDF’s counterclaims against the Trusts. LVDF is not entitled to prosecute its counterclaims on the

1 gossamer threads of whimsy, speculation and conjecture. Therefore, summary judgment is
2 appropriate.

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

6 DATED this 23rd day of January, 2020.

7 **ALDRICH LAW FIRM, LTD.**

8 /s/ John P. Aldrich
9 John P. Aldrich, Esq.
10 Nevada Bar No. 6877
11 Catherine Hernandez, Esq.
12 Nevada Bar No. 8410
13 7866 West Sahara Avenue
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15 Telephone: (702) 853-5490
16 Facsimile: (702) 227-1975
17 *Attorneys for Plaintiff/Counterdefendants*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I.**

16 **PROCEDURAL HISTORY**

17 On April 23, 2019, LVDF filed its Answer to Plaintiff's Second Amended Complaint.
18 Concurrently therewith, LVDF filed its Counterclaim against Front Sight Management LLC
19 ("Front Sight"), Ignatius Piazza, Jennifer Piazza (Dr. Ignatius Piazza's wife), and the Trusts.
20 The counterclaims against the Trusts includes: (1) Intentional Interference with Contractual
21 Relationships; (2) Civil Conspiracy; and (3) Waste.

22 On July 3, 2019, the VNV Trust Defendants filed a Motion to Dismiss the counterclaims.
23 On August 20, 2019, the Court, among other things, heard argument on the Motion to Dismiss
24

1 LVDF's Counterclaims. After hearing and stipulation of the parties (as to certain claims), the
2 Court granted the Motion to Dismiss in part, and ordered dismissal of LVDF's claims of: (1)
3 Breach of Contract; (2) Breach of the Covenant of Good Faith and Fair Dealing against Front
4 Sight; and (3) Waste as to Jennifer Piazza.

5 The Trusts filed a responsive pleading to the remaining counterclaims September 30,
6 2019. The remaining counterclaims against the Trusts are: (1) Intentional Interference with
7 Contractual Relationships; (2) Civil Conspiracy; and (3) Waste.

8 The Court is well aware of the discovery dispute that has been ongoing in this matter.
9 See Front Sight's Motion to Compel and for Sanctions and hearing transcripts related thereto
10 (argued on October 23, 2019, November 21, 2019, November 26, 2019, December 5, 2019,
11 December 11, 2019, and December 18, 2019). Needless to say, although Front Sight first asked
12 for documents to support LVDF's Counterclaims back in July 2019, responses being due before
13 the end of July 2019, and multiple extensions, LVDF has provided no documents to support their
14 allegations set forth in the Counterclaims.

15 II.

16 UNDISPUTED FACTS

17 LVDF has not produced any evidence to support its counterclaims against the Trusts and
18 the Court has made significant findings that Front Sight has established that its expenses on the
19 project exceed the amount loaned by LVDF. The following are the general and conclusory
20 claims against the Trusts, in standard text, with an explanation why each allegation is meritless

21 **in bold:**

- 22 1. VNV DYNASTY TRUST I is a Nevada statutory trust, Nevada business, family trust,
23 or other irrevocable trust that functions as an entity and that may claim title and
24 ownership interest in the Property and was organized and exists under the laws of

1 Nevada and Counter Defendants IGNATIUS PIAZZA and JENNIFER PIAZZA are
2 trustees and/or beneficiaries of the VNV DYNASTY TRUST I. (Counterclaim, ¶ 4.)

3 **This allegation is not relevant to any counterclaim, even if true.**

- 4 2. VNV DYNASTY TRUST II is a Nevada statutory trust, Nevada business, family trust,
5 or other irrevocable trust that functions as an entity and that may claim title and
6 ownership interest in the Property and was organized and exists under the laws of
7 Nevada and Counter Defendants IGNATIUS PIAZZA and JENNIFER PIAZZA are
8 trustees and/or beneficiaries of the VNV DYNASTY TRUST II. (Counterclaim, ¶ 5.)

9 **This allegation is not relevant to any counterclaim, even if true.**

- 10 3. The Trusts are influenced and governed by Ignatius Piazza, and they are so intertwined
11 with one another as to be factually and legally indistinguishable. (Counterclaim, ¶ 9.)

12 **This allegation is general and conclusory, not factual, and LVDF has not**
13 **produced any evidence to provide factual support for this claim.**

- 14 4. The Trusts received millions of dollars of Loan proceeds as shareholder distributions.
15 (Counterclaim, ¶ 21.) **The Court found that Front Sight “supplied exhibits to**
16 **establish project cost and expenditures...exceed the loan amounts advanced by**
17 **LV Development....” (See Notice of Entry of Findings of Fact, Conclusions of**
18 **Law, and Order Denying Defendant Las Vegas Development Fund LLC's Motion**
19 **to Dissolve Temporary Restraining Order and to Appoint a Receiver, attached**
20 **hereto as Exhibit 1, p. 3.) Therefore, this allegation is false.**

- 21 5. The Trusts received funds, either directly or indirectly, in a way that violated the CLA
22 Section 5.18. (Counterclaim, ¶¶ 41-42.) **The Court found that Front Sight**
23 **“supplied exhibits to establish project cost and expenditures...exceed the loan**
24

1 **amounts advanced by LV Development....” (Exhibit 1.) Therefore, this allegation**
2 **is false.**

3 6. Ignatius Piazza and Jennifer Piazza diverted profits generated by Front Sight’s
4 operations to themselves and the Trusts, and used EB-5 investor funds to pay Front
5 Sight’s operating expenses and pre-existing loans. (Counterclaim, ¶ 44.) **The Court**
6 **found that Front Sight “supplied exhibits to establish project cost and**
7 **expenditures...exceed the loan amounts advanced by LV Development....”**
8 **(Exhibit 1.) Therefore, this allegation is false.**

9 7. The Trusts induced Front Sight into improperly using “funds” for their personal
10 benefit. (Counterclaim, ¶ 70.) **The Court found that Front Sight “supplied exhibits**
11 **to establish project cost and expenditures...exceed the loan amounts advanced by**
12 **LV Development....” (Exhibit 1.) Therefore, this allegation is false.**

13 8. The Trusts conspired with Dr. Piazza, Jennifer Piazza, and Front Sight in order to
14 divert “monies from Front Sight that were needed to maintain Front Sight’s solvency
15 and its ability to meet its obligations under the CLA regarding timely completion of
16 the Project and repayment of the loan, for their own individual advantage and benefit.”
17 (Counterclaim, ¶ 81.) **The Court found that Front Sight “supplied exhibits to**
18 **establish project cost and expenditures...exceed the loan amounts advanced by**
19 **LV Development....” (Exhibit 1.) This allegation is false. Additionally, as this**
20 **assertion relates to the Civil Conspiracy claim, there is no underlying predicate.**

21 9. The Trusts committed waste by improperly using funds earmarked for development of
22 the Property for the personal benefit of Ignatius Piazza, Jennifer Piazza, and the
23 Trusts. (Counterclaim, ¶ 98.) **The Court found that Front Sight “supplied exhibits**
24

1 **to establish project cost and expenditures...exceed the loan amounts advanced by**
2 **LV Development...” (Exhibit 1.) Therefore, this allegation is false.**

3 10. The Trusts committed waste by selling unregistered securities which created
4 substantial legal and financial liability to Front Sight. (Counterclaim, ¶ 98.) **This**
5 **allegation is general and conclusory, and LVDF has not produced any evidence to**
6 **provide factual support for this claim.**

7 11. The Trusts committed waste by misappropriating Front Sight’s assets for the personal
8 benefit of Ignatius and Jennifer Piazza and other beneficiaries of the Trusts.
9 (Counterclaim, ¶ 98.) **This allegation is general and conclusory, and LVDF has not**
10 **produced any evidence to provide factual support for this claim. And the Court**
11 **found that Front Sight “supplied exhibits to establish project cost and**
12 **expenditures...exceed the loan amounts advanced by LV Development...”**
13 **(Exhibit 1.)**

14 12. The Trusts committed waste by selling various instruments which include rights to
15 Front Sight’s resort property for highly reduced rates which further encumbered the
16 Property, either directly or indirectly. (Counterclaim, ¶ 98.) **This allegation is**
17 **general and conclusory, and LVDF has not produced any evidence to provide**
18 **factual support for this claim. And the Court found that Front Sight “supplied**
19 **exhibits to establish project cost and expenditures...exceed the loan amounts**
20 **advanced by LV Development...” (Exhibit 1.)**

21 Front Sight requested “copies of all documents which support, refute, or in any way relate
22 to your Counterclaim.” (See Plaintiff’s First Set of Requests for Production of Documents to
23 Defendant LVDF, Request No. 74, relevant portions attached as **Exhibit 2.**) LVDF responded:
24

1 Responding Party objects to this Document Request on grounds that it is vague
2 and ambiguous as to “refuting” of Responding Parties Counterclaim; it is
3 compound as to issues and facts; it is duplicative to other Document Requests
4 contained herein and herewith; it is burdensome and oppressive because it seeks
5 documents that are already in possession of Requesting Party or readily available
6 to Requesting Party; it seeks information protected by the attorney-client privilege
7 and work product doctrine; and it purports to require Responding Party to disclose
8 information that is a trade secret, confidential, proprietary, commercially
9 sensitive, or information that is protected by rights of privacy. In Addition, this
10 Document Request is overly broad because it seeks the production of documents
11 beyond the scope of issues directly related to the pending motion for a
12 preliminary injunction. Responding Party, subject to and without waiving said
13 objections, **will produce all documents relating to the Injunction Issues** that
14 are responsive to this Document Request.

15 (See Defendant LVDF’s Responses to Plaintiff’s First Set of Requests for Production of
16 Documents, Response to Request No. 74, relevant portions attached hereto as **Exhibit 3**
17 (emphasis added).)

18 Front Sight again requested “copies of all documents which support, refute, or in any way
19 relate to your Counterclaims.” (See Plaintiff’s Third Set of Requests for Production of
20 Documents to Defendant LVDF, Request No. 133, relevant portions attached as **Exhibit 4.**)
21 LVDF responded:

22 Responding party objects to this Document Request because; individually, and in
23 aggregate with the other requests made herein and previously propounded, this
24 request fails to meet the proportionality requirements of proper discovery and thus
is over burdensome and harassing; it is compound as to issues and facts; it is
vague and ambiguous; it is duplicative of other requests contained herein and
previously propounded; it seeks documents that are already in requesting party’s
possession or equally accessible to the requesting party; it seeks information
protected by the attorney-client privilege and/or attorney work product doctrine; it
calls for the production of documents that are not relevant to this issues presented;
and it purports to require responding party to disclose information that is a trade
secret, confidential, proprietary, commercially sensitive, or information that is
privileged or protected by rights of privacy regarding financial information and
tax records of responding party and/or third parties.

(See Defendant LVDF’s Responses to Plaintiff’s Third Set of Requests for Production of
Documents, Response to Request No. 133, relevant portions attached hereto as **Exhibit 5.**)

1 In its Supplemental Response to Request No. 133, LVDF stated: “Subject to and without
2 waiving the previously asserted objections, Responding Party will produce all non-privileged
3 documents that are responsive to this request.” (See Defendant LVDF’s Supplemental
4 Responses to Plaintiff’s First Set of Requests for Production of Documents, Response to Request
5 No. 133, relevant portions attached hereto as **Exhibit 6.**) Despite repeated extensions, including
6 the latest Court-imposed deadline of January 10, 2020, LVDF has not provided documents to
7 support its counterclaims – against any party.

8 **III.**

9 **LEGAL ARGUMENT**

10 **A. SUMMARY JUDGMENT IS APPROPRIATE BECAUSE NO FACTS EXIST TO**
11 **SUPPORT THE COUNTERCLAIMS AGAINST THE TRUSTS AND THE**
12 **TRUSTS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

13 “Summary judgment must be granted when the pleadings and record evidence, viewed in
14 the light most favorable to the nonmoving party, demonstrate that there are no genuine issues as
15 to any material facts and the moving party is entitled to judgment as a matter of law.”
16 *Stockmeier v. State*, 127 Nev. 243, 247, 255 P.3d 209, 212 (2011). “[W]hen a motion for
17 summary judgment is made and supported as required by NRC 56, the non-moving party may
18 not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth
19 **specific facts** demonstrating the existence of a genuine factual issue.” *Wood v. Safeway, Inc.*,
20 121 Nev. 724, 731, 121 P.3d 1026, 1030-31 (2005) (quoting *Pegasus v. Reno Newspapers, Inc.*,
21 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (emphasis added)). “Conjecture and speculation do
22 not create an issue of fact.” 127 Nev. at 247, 255 P.3d at 212.

23 This Court has already made factual findings that conclusively resolve all three causes of
24 action brought by LVDF against the Trusts. Furthermore, LVDF has not produced any evidence

1 to provide factual support for its counterclaims. Therefore, summary judgment as to all claims is
2 proper and must be granted.

3 **1. Intentional Interference with Contractual Relationships**

4 “In an action for intentional interference with contractual relations, a plaintiff must
5 establish: (1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3)
6 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption
7 of the contract; and (5) resulting damage.” *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71
8 P.3d 1264, 1267 (2003) (citing *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290
9 (1989).

10 LVDF claimed: (1) the CLA (including the 2 Amendments thereto) between Front Sight
11 and LVDF is valid; (2) the Trusts had knowledge of the CLA and “induce[d] Front Sight to
12 improperly use funds for the personal benefit of . . . [the Trusts];” (emphasis added) (3) Front
13 Sight breached the CLA; (4) the breach was caused by the conduct of the Trusts; and (5) LVDF
14 sustained damages. (Counterclaim, ¶¶ 68-73.) Each of these allegations is general and
15 conclusory and neither assert any facts nor create a factual dispute. The key item is #3 above,
16 found at paragraph 70 of the Counterclaim, the assertion the Trusts “induce[d] Front Sight to
17 improperly use funds for the personal benefit of . . . [the Trusts].”

18 LVDF cannot establish that the Trusts intentionally interfered with its contractual
19 relations. To the contrary, as described above, the Court has already found that Front Sight
20 “supplied exhibits to establish project cost and expenditures...exceed the loan amounts advanced
21 by LV Development...” (Exhibit 1.) Accordingly, the allegations against the Trusts related to
22 this cause of action are false.

23 Furthermore, LVDF did not produce any documents in response to Front Sight’s requests
24 for documents that support its counterclaims, nor has it produced any evidence of “harm” it

1 alleged it suffered because of the Trusts. Therefore, summary judgment is appropriate because
2 Rule 56(c) requires “sufficient evidence supporting the claimed factual dispute be shown to
3 require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *Anderson v.*
4 *Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2510 (1986) (citation omitted).

5 **2. Civil Conspiracy**

6 “Actionable civil conspiracy arises where two or more persons undertake some concerted
7 action with the intent to accomplish an unlawful objective for the purpose of harming another,
8 and damage results.” *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 335 P.3d 190, 198-99
9 (Nev. 2014) (quoting *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304,
10 1311, 971 P.2d 1251, 1256 (1998) (internal quotations omitted)). “[A] plaintiff[claimant] must
11 provide evidence of an explicit or tacit agreement between the alleged conspirators.” *Id.*
12 (citation omitted).

13 LVDF cannot defend against summary judgment based on the unsupported allegations in
14 its Counterclaim. “[B]are use of the word ‘conspiracy,’ with no supporting facts that tend to
15 show the existence of an unlawful agreement or prima facie improper behavior” cannot
16 overcome summary judgment. *See Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 301,
17 662 P.2d 610, 621 (1983) (citing *Moran v. Bench*, 353 F.2d 193, 195 (1st Cir. 1965), *cert.*
18 *denied*, 384 U.S. 906 (1966)).

19 Again, the Court found that Front Sight “supplied exhibits to establish project cost and
20 expenditures . . . exceed the loan amounts advanced by LV Development. . . .” (Exhibit 1.)
21 Based on these findings, LVDF cannot set forth any evidence to show between any
22 Counterdefendants: (1) “an explicit or tacit agreement;” (2) “intent to accomplish an unlawful
23 objective;” and (3) intent to harm LVDF.

1 LVDF cannot and has not shown any harm either. LVDF did not properly respond to a
2 single request for production of documents. Rather, it sent “responses” that were not responses
3 at all, but contained essentially the same series of boilerplate objections to each and every
4 request. Furthermore, LVDF has yet to identify or provide a single document in support of its
5 counterclaims against the Trusts or indicate any such documents exist.

6 Summary judgment will be upheld where there is no evidence of an express agreement to
7 commit an unlawful act with the intention to harm. *See Consol. Generator-Nevada v. Cummins*
8 *Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). Therefore, Summary Judgment
9 in favor of the Trusts is appropriate as to Civil Conspiracy.

10 **3. Waste**

11 “[W]aste is the permanent or lasting injury to the estate by one who has not an absolute
12 or unqualified title thereto.” *Price v. Ward*, 25 Nev. 203, 209, 58 P. 849, 849-50 (1899).
13 “[W]aste is conduct (including in this word both acts of commission and of omission) on the part
14 of the person in possession of land which is actionable at the behest of, and for protection of the
15 reasonable expectations of, another owner of an interest in the same land.... Thus, waste is,
16 functionally, a part of the law which keeps in balance the conflicting desires of persons having
17 interests in the same land.” *Cornelison v. Kornbluth*, 15 Cal. 3d 590, 597-98, 125 Cal. Rptr. 557,
18 562, 542 P.2d 981, 986 (1975) (quoting 5 Powell on Real Property (1974) § 636, pp. 5-6).

19 LVDF alleged it suffered injury because: “Waste was committed...[by] improperly using
20 funds earmarked for development of the Property for the personal benefit of Counter Defendants;
21 selling unregistered securities which create substantial legal and financial liability to Front Sight,
22 misappropriating Front Sight’s assets for the personal benefit of...beneficiaries of the [Trusts]
23 and selling various instruments which include rights to Front Sight’s resort property for highly
24 reduced rates....” (Counterclaim, ¶¶ 98-99.)

1 Based on the foregoing, the Trusts respectfully request that the Court grant this Motion in
2 its entirety and grant judgment in favor of the Trusts as to the counterclaims against them.

3 DATED this 23rd day of January, 2020.

4 **ALDRICH LAW FIRM, LTD.**

5 /s/ John P. Aldrich

6 John P. Aldrich, Esq.

7 Nevada Bar No. 6877

8 Catherine Hernandez, Esq.

9 Nevada Bar No. 8410

10 7866 West Sahara Avenue

11 Las Vegas, Nevada 89117

12 Telephone: (702) 853-5490

13 Facsimile: (702) 227-1975

14 *Attorneys for Plaintiff/Counterdefendants*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 23rd day of January, 2020, I caused the foregoing
3 **MOTION FOR SUMMARY JUDGMENT AS TO THE COUNTERCLAIMS AGAINST**
4 **VNV DYNASTY TRUST I AND VNV DYNASTY TRUST II** to be electronically filed and
5 served with the Clerk of the Court using Wiznet which will send notification of such filing to the
6 email addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if
7 not included on the Electronic Mail Notice List, to the following parties:

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

11 C. Keith Greer, Esq.
12 16855 West Bernardo Drive, Suite 255
San Diego, CA 92127

13 *Attorneys for Defendants/Counterclaimant*

14 /s/ T. Bixenmann
15 An employee of ALDRICH LAW FIRM, LTD.
16
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EXHIBIT 1

EXHIBIT 1



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

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

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

10 Plaintiff,

11 vs.

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

13 Defendants.
14 _____
15

16 AND ALL RELATED COUNTERCLAIMS.

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

NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF
LAW, AND ORDER DENYING
DEFENDANT LAS VEGAS
DEVELOPMENT FUND LLC'S
MOTION TO DISSOLVE
TEMPORARY RESTRAINING
ORDER AND TO APPOINT A
RECEIVER

17 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Order
18 Denying Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary
19 Restraining Order and to Appoint a Receiver was entered by the Court in the above-captioned

20 ///

21 ///

22 ///

23 ///

1 action on the 23rd day of January, 2020, a true and correct copy of which is attached hereto.

2 DATED this 23rd day of January, 2020.

3 **ALDRICH LAW FIRM, LTD.**

4 /s/ John P. Aldrich

5 John P. Aldrich, Esq.

6 Nevada Bar No. 6877

7 Catherine Hernandez, Esq.

8 Nevada Bar No. 8410

9 7866 West Sahara Avenue

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13 *Attorneys for Plaintiff/Counterdefendants*

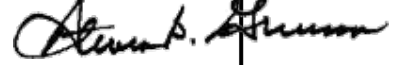
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 23rd day of January, 2020, I caused the foregoing
3 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
4 **ORDER DENYING DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S**
5 **MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO APPOINT**
6 **A RECEIVER** to be electronically filed and served with the Clerk of the Court using Wiznet
7 which will send notification of such filing to the email addresses denoted on the Electronic Mail
8 Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List,
9 to the following parties:

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12 FARMER CASE & FEDOR
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14 Las Vegas, NV 89123

15 C. Keith Greer, Esq.
16 16855 West Bernardo Drive, Suite 255
17 San Diego, CA 92127
18 *Attorneys for Defendants*

19 /s/ T. Bixenmann
20 An employee of ALDRICH LAW FIRM, LTD.
21
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24



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6 *Attorneys for Plaintiff/Counterdefendants*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

10 Plaintiff,

11 vs.

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

14 Defendants.
15

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER DENYING DEFENDANT
LAS VEGAS DEVELOPMENT FUND
LLC'S MOTION TO DISSOLVE
TEMPORARY RESTRAINING
ORDER AND TO APPOINT A
RECEIVER

16 AND ALL RELATED COUNTERCLAIMS.
17

18 This matter having come before the Court on September 20, 2019 and November 26,
19 2019 on Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary
20 Restraining Order and to Appoint Receiver, John P. Aldrich, Esq. appearing on behalf of
21 Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer, Esq., appearing on behalf of
22 Defendants, the Court having reviewed the pleadings on file herein, having heard oral argument
23 of the parties through their respective counsel, this Court makes the following Findings of Fact
24 and Conclusions of Law.

JAN 10 2020

- 1 g. Alleged Breach #7: Failure to Notify of Event of Default – CLA §5.10
2 (Motion, p. 11);
- 3 h. Alleged Breach #8: Refusal to Allow Inspection of Records – CLA §5.4
4 (Motion, p. 12);
- 5 i. Alleged Breach #9: Refusal to Allow Inspection of the Project – CLA §3.3
6 (Motion, p. 12);
- 7 j. Alleged Breach #10: Failure to Provide EB-5 Information – CLA §1.7(f)
8 (Motion, p. 12);
- 9 k. Alleged Breach #11: Non Payment of Default Interest – CLA §1.2 (Motion, p.
10 12);
- 11 l. Alleged Breach #12: Non Payment of Legal Fees – CLA §8.2 (Motion, p. 12);
12 and
- 13 m. Alleged Breach #13: Failure to Comply with Applicable Laws (CLA §5.13)
14 and Failure to Give Written Notice of Criminal Complaint (CLA §5.14)
15 (Motion, p. 13).

16 2. The first allegation of breach focuses on the alleged misuse of loan proceeds by
17 Plaintiff/Counter-Defendant, Front Sight Management, LLC (Front Sight). However,
18 in its Opposition to Defendant/Counter-Claimant LVDF's Motion to Dissolve the
19 TRO and Appoint a Receiver, Front Sight supplied evidence to establish project cost
20 and expenditures which exceed the loan amounts advanced by LVDF.

21 3. There are four (4) paragraphs of the Construction Loan Agreement that relate to loan
22 proceeds. They are as follows:
23
24

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

2
3 (e) Borrower shall use the proceeds of the Loan solely for the purpose
4 of funding directly, or advancing to Affiliates to pay, the costs of the Project, **in**
5 **accordance with the terms and conditions of this Agreement,** as set forth in the
6 Budget and the Project documents submitted to, and approved by, USCIS.
7

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

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

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

40 (Emphases added.)

41 4. Exhibit 47 to the Evidentiary Hearing Exhibits, Front Sight's "Response to Notice of
42 Default dated July 30, 2018," shows project costs and expenditures well in excess of
43 \$6.3 million LVDF advanced. In Exhibit C to that document, Front Sight provided
44

1 copies of QuickBooks monthly reports that showed the following Project costs and
 2 expenditures:

TIME PERIOD	TOTAL
October 2015 – December 2015	\$3,387,591.35
January 2016 – December 2016	\$7,466,570.24
January 2017 – December 2017	\$12,454,018.84
	\$23,308,180.43

3
 4
 5
 6 5. Exhibit 48 to the Evidentiary Hearing Exhibits is Front Sight’s “Additional Response
 7 to Notices of Default dated July 31, 2018, and August 24, 2018 and Initial Response
 8 to Notice of Default dated August 28, 2018.” In that exhibit, Front Sight provided to
 9 Defendant Dziubla a multitude of documents showing the following expenses which
 10 were paid by Front Sight between the closing of the loan in October 2016 and June
 11 30, 2017:

EXPENSE CATEGORY	TOTAL
Reimbursable construction costs prior to the closing date of the Construction Loan Agreement	\$994,336.56
Construction costs from the closing date of the Construction Loan Agreement to June 30, 2017	\$1,031,728.10
Class Action lien payoff as of the time of closing of the Construction Loan Agreement	\$551,871.50
Class action lien pay-down prior to the closing date of the Construction Loan Agreement	\$1,860,000.00
Holecek note paydown prior to the closing date of the Construction Loan Agreement	\$6,004,000.00
Holecek note paydown from the closing date of the Construction Loan Agreement to June 30, 2017	\$1,422,000.00
Project legal fees	\$81,551.25
Fees Paid to Chicago Title in connection with original closing	\$9,217.01
EB5 Impact Advisor fees	\$244,730.00
Fees paid to US Capital Partners evidencing efforts to secure “Senior Debt” prior to securing construction line of credit from Morales Construction	\$62,500.00
Project consulting fees	\$82,550.00
	\$12,344,484.42

1 6. Adding construction costs prior to closing with construction costs from closing to
2 June 30, 2017, plus the class action lien payoff as of the closing date of the CLA,
3 Front Sight's expenses far exceed the US\$2.625M in EB5 funds delivered on or
4 before June 30, 2017.

5 7. Exhibit 49 to the Evidentiary Hearing Exhibits is Front Sight's "EB-5 Documentation
6 and Additional Information for the Period July 1, 2017, through October 31, 2018
7 Delivered Pursuant to Section 5.10(e) of the Construction Loan Agreement." In that
8 exhibit, Front Sight provided to Defendant Dziubla several hundred additional pages
9 of documents showing the following expenses which were paid by Front Sight:

EXPENSE CATEGORY	TOTAL
Construction costs from June 30, 2017, through and including July 1, 2018	\$2,088,490.00
Holecek note paydown from June 30, 2017, through and including July 1, 2018	\$1,896,000.00
Project legal fees from June 30, 2017, through and including July 1, 2018	\$14,116.00
Construction costs from July 1, 2018, through and including October 30, 2018	\$402,621.00
Holecek note paydown from July 1, 2018, through and including October 30, 2018	\$632,000.00
Project legal fees from July 1, 2018, through and including October 30, 2018	\$6,984.00
Construction costs from September 6, 2016, through and including August 24, 2018 (commercial revolving charge account of Front Sight established with Home Depot)	\$66,173.67
Construction costs from October 11, 2016, through and including July 13, 2018 (charged to the Visa credit card account of Front Sight established with City National Bank)	\$43,212.07
Construction costs from August 30, 2016, through and including February 20, 2018 (charged to the Premier Rewards Gold charge and credit card account of Front Sight established with American Express)	\$92,868.00
	\$5,242,464.74

22
23 8. Based on this uncontroverted evidence, the Court finds Front Sight's expenses on the
24 Project far exceed the amount of the loan from Defendant LVDF.

1 9. As to the fourth breach alleged by Defendant/Counterclaimant LVDF, the alleged
2 material change in size, scope, and timing of the project, it appears that the size of the
3 classroom was reduced but not the overall size of the facility, and therefore, the Court
4 finds that there is an issue of fact as to this alleged breach of the CLA.

5 10. Regarding the second, third, and fifth through thirteenth alleged breaches, as asserted
6 by Defendant/Counterclaimant LVDF, the parties asserted multiple competing factual
7 positions and made conflicting factual assertions regarding Defendant LVDF's
8 allegations of breach of the CLA. Based on the state of the evidence as of the date of
9 the hearing on the instant Motion, the Court finds that genuine issues of fact remain
10 as to the second, third, and fifth through thirteenth alleged breaches, as asserted by
11 Defendant/Counterclaimant LVDF.

12 **CONCLUSIONS OF LAW AND ORDER**

13 The Court makes the following Conclusions of Law:

14 1. Regarding alleged Breach #1, the Court concludes that Front Sight's expenses on
15 the Project far exceed the amount of the loan from Defendant LVDF has Defendant LVDF's
16 assertion that Front Sight improperly used loan proceeds is without merit, and consequently,
17 LVDF has failed to establish this alleged breach.

18 2. As to the second, third, and fifth through thirteenth alleged breaches, as asserted
19 by Defendant/Counterclaimant LVDF, the Court concludes that LVDF has not established that
20 Plaintiff is in breach of the Construction Loan Agreement, and consequently, LVDF is not
21 entitled to the relief it seeks by this Motion.

22 4. Regarding the fourth alleged breach, pertaining to the reduction in the size of the
23 Patriot Pavilion, because it appears that the size of the classroom was reduced but not the overall
24

1 size of the facility, creating an issue of fact as to this alleged breach, the Court concludes that
2 LVDF has not established that Plaintiff is in breach of the construction Loan Agreement, and
3 consequently, LVDF is not entitled to the relief it seeks by this Motion.

4 **ORDER**

5 **IT IS HEREBY ORDERED** that Defendant Las Vegas Development Fund LLC's
6 Motion to Dissolve Temporary Restraining Order and to Appoint Receiver is DENIED.

7 **IT IS SO ORDERED.**

8 DATED this 22nd day of January, 2020.

9
10 
11 DISTRICT COURT JUDGE
12 

13 Respectfully submitted by:

14 **ALDRICH LAW FIRM, LTD.**

15 

16 John P. Aldrich, Esq.
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18 Catherine Hernandez, Esq.
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24 *Attorneys for Plaintiff*

EXHIBIT 2

EXHIBIT 2

1 **DISC**

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4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410
6 Matthew B. Beckstead, Esq.
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13 *Attorneys for Plaintiff*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 vs.

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

Defendants.

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

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT LAS
VEGAS DEVELOPMENT FUND LLC**

1 LAS VEGAS DEVELOPMENT FUND LLC,

2 Counterclaimant,

3 vs.

4 FRONT SIGHT MANAGEMENT, LLC, a
5 Nevada Limited Liability Company;
6 IGNATIUS PIAZZA, as an individual and in
7 his capacity as Trustee and/or beneficiary of
8 VNV DYNASTY TRUST I and VNV
9 DYNASTY TRUST II; JENNIFER PIAZZA, as
10 an individual and in her capacity as Trustee
11 and/or beneficiary of VNV DYNASTY TRUST
12 I and VNV DYNASTY TRUST II; VNV
13 DYNASTY TRUST I, an irrevocable Nevada
14 trust; VNV DYNASTY TRUST II, an
15 irrevocable Nevada trust; and ROES 1 through
16 10, inclusive,

17 Counterdefendants.

18 **PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO**
19 **DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC**

20 **TO: LAS VEGAS DEVELOPMENT FUND LLC, Defendant:**

21 **TO: KATHYN HOLBERT, ESQ. AND C. KEITH GREER, ESQ., attorneys for**
22 **Defendant:**

23 Plaintiff FRONT SIGHT MANAGEMENT LLC (hereafter "Front Sight"), by and
24 through its attorney, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B.
Beckstead, Esq., of the Aldrich Law Firm, Ltd., hereby requests that Defendant LAS VEGAS
DEVELOPMENT FUND LLC (hereafter "LVDF" or "Defendant"), pursuant to Nev. R. Civ. P.
34, respond to the following Requests for Production of Documents, in writing, within fourteen
(14) days of service hereof, pursuant to the order of the Court at the hearing on July 10, 2019.

///

///

1 **REQUEST NO. 70:**

2 Please provide copies of any and all documents which support, refute, or in any way
3 relate to your denial of the allegations of Paragraphs 100-106 of the Fifth Cause of Action
4 (Breach of Contract Against EB5IA and LVDF) of the Second Amended Complaint.

5 **REQUEST NO. 71:**

6 Please provide copies of any and all documents which support, refute, or in any way
7 relate to your denial of the allegations of Paragraphs 107-113 of the Sixth Cause of Action
8 (Contractual Breach of Implied Covenant of Good Faith and Fair Dealing Against the Entity
9 Defendants) of the Second Amended Complaint.

10 **REQUEST NO. 72:**

11 Please provide copies of any and all documents which support, refute, or in any way
12 relate to your denial of the allegations of Paragraphs 122-128 of the Eighth Cause of Action
13 (Intentional Interference with Prospective Economic Advantage Against the Entity Defendants
14 and Defendant Dziubla) of the Second Amended Complaint.

15 **REQUEST NO. 73:**

16 Please provide copies of any and all documents which support, refute, or in any way
17 relate to each and every Affirmative Defense you raised in Defendants' Answer to the Second
18 Amended Complaint.

19 **REQUEST NO. 74:**

20 Please provide copies of any and all documents which support, refute, or in any way
21 relate to your Counterclaim.

22 ///

23 ///

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EXHIBIT 3

EXHIBIT 3

1 **RRFP**
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4 tcase@farmercase.com
5 KATHRYN HOLBERT, ESQ.
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21 Attorneys for Defendants
22 LAS VEGAS DEVELOPMENT FUND LLC, EB5
23 IMPACT CAPITAL REGIONAL CENTER LLC,
24 EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
25 JON FLEMING and LINDA STANWOOD

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

28 FRONT SIGHT MANAGEMENT LLC, a) CASE NO.: A-18-781084-B
Nevada Limited Liability Company,) DEPT NO.: 16
30 Plaintiff,)
31 vs.) DEFENDANT, LAS VEGAS DEVELOPMENT
32 LAS VEGAS DEVELOPMENT FUND LLC,) FUND LLC'S RESPONSES TO PLAINTIFF'S
33 et al.,) FIRST SET OF REQUESTS FOR
34 Defendants.) PRODUCTION OF DOCUMENTS
35)
36)
37)
38)

39 **PROPOUNDING PARTY: Plaintiff, FRONT SIGHT MANAGEMENT LLC**
40 **RESPONDING PARTY: Defendant, LAS VEGAS DEVELOPMENT FUND LLC**
41 **SET NO: ONE**

42 **LAS VEGAS DEVELOPMENT FUND LLC'S RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS**

1 In Addition, this Document Request is overly broad because it seeks the production of
2 documents beyond the scope of issues directly related to the pending motion for a preliminary
3 injunction. Responding Party, subject to and without waiving said objections, will produce all
4 documents relating to the Injunction Issues that are responsive to this Document Request.

5 **REQUEST NO. 73:**

6 Please provide copies of any and all documents which support, refute, or in any way relate
7 to each and every Affirmative Defense you raised in Defendants' Answer to the Second Amended
8 Complaint.

9 **RESPONSE TO REQUEST NO. 73:**

10 Responding Party objects to this Document Request on grounds that it is compound as to
11 issues and facts; it is duplicative to other Document Requests contained herein and herewith; it is
12 burdensome and oppressive because it seeks documents that are already in possession of
13 Requesting Party or readily available to Requesting Party; it seeks information protected by the
14 attorney-client privilege and work product doctrine; and it purports to require Responding Party
15 to disclose information that is a trade secret, confidential, proprietary, commercially sensitive, or
16 information that is protected by rights of privacy .

17 In Addition, this Document Request is overly broad because it seeks the production of
18 documents beyond the scope of issues directly related to the pending motion for a preliminary
19 injunction. Responding Party, subject to and without waiving said objections, will produce all
20 documents relating to the Injunction Issues that are responsive to this Document Request.

21 **REQUEST NO. 74:**

22 Please provide copies of any and all documents which support, refute, or in any way relate
23 to your Counterclaim.

24 **RESPONSE TO REQUEST NO. 74:**

25 Responding Party objects to this Document Request on grounds that it is vague and
26 ambiguous as to "refuting" of Responding Parties Counterclaim; it is compound as to issues and
27 facts; it is duplicative to other Document Requests contained herein and herewith; it is

1 burdensome and oppressive because it seeks documents that are already in possession of
2 Requesting Party or readily available to Requesting Party; it seeks information protected by the
3 attorney-client privilege and work product doctrine; and it purports to require Responding Party
4 to disclose information that is a trade secret, confidential, proprietary, commercially sensitive, or
5 information that is protected by rights of privacy .

6 In Addition, this Document Request is overly broad because it seeks the production of
7 documents beyond the scope of issues directly related to the pending motion for a preliminary
8 injunction. Responding Party, subject to and without waiving said objections, will produce all
9 documents relating to the Injunction Issues that are responsive to this Document Request.

10 **REQUEST NO. 75:**

11 Please provide copies of any and all documents which show or in any way relate to each and
12 every payment and/or transfer of money or property made by Plaintiff to you from 2012 to the
13 present, including documents that show where or how that money or property was used after you
14 received it.

15 **RESPONSE TO REQUEST NO. 75:**

16 Responding Party objects to this Document Request on grounds that it is burdensome and
17 oppressive because it seeks documents that are already in possession of Requesting Party or
18 readily available to Requesting Party; it is compound as to issues and facts; it is duplicative to
19 other Document Requests contained herein and herewith; it seeks information protected by the
20 attorney-client privilege and work product doctrine; and it purports to require Responding Party
21 to disclose information that is a trade secret, confidential, proprietary, commercially sensitive, or
22 information that is protected by rights of privacy .

23 In Addition, this Document Request is overly broad because it seeks the production of
24 documents beyond the scope of issues directly related to the pending motion for a preliminary
25 injunction. Responding Party, subject to and without waiving said objections, will produce all
26 documents relating to the Injunction Issues that are responsive to this Document Request.

27
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EXHIBIT 4

EXHIBIT 4

1 **DISC**

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

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13 *Attorneys for Plaintiff*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 vs.

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

Defendants.

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

**PLAINTIFF'S THIRD SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT LAS
VEGAS DEVELOPMENT FUND LLC**

1 LAS VEGAS DEVELOPMENT FUND LLC,

2 Counterclaimant,

3 vs.

4 FRONT SIGHT MANAGEMENT, LLC, a
5 Nevada Limited Liability Company;
6 IGNATIUS PIAZZA, as an individual and in
7 his capacity as Trustee and/or beneficiary of
8 VNV DYNASTY TRUST I and VNV
9 DYNASTY TRUST II; JENNIFER PIAZZA, as
10 an individual and in her capacity as Trustee
11 and/or beneficiary of VNV DYNASTY TRUST
12 I and VNV DYNASTY TRUST II; VNV
13 DYNASTY TRUST I, an irrevocable Nevada
14 trust; VNV DYNASTY TRUST II, an
15 irrevocable Nevada trust; and ROES 1 through
16 10, inclusive,

17 Counterdefendants.

18 **PLAINTIFF'S THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO**
19 **DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC**

20 **TO: LAS VEGAS DEVELOPMENT FUND LLC, Defendant:**

21 **TO: KATHYN HOLBERT, ESQ. AND C. KEITH GREER, ESQ., attorneys for**
22 **Defendant:**

23 Plaintiff FRONT SIGHT MANAGEMENT LLC (hereafter "Front Sight"), by and
24 through its attorney, John P. Aldrich, Esq., Catherine Hernandez, Esq., and Matthew B.
Beckstead, Esq., of the Aldrich Law Firm, Ltd., hereby requests that Defendant LAS VEGAS
DEVELOPMENT FUND LLC (hereafter "LVDF" or "Defendant"), pursuant to Nev. R. Civ. P.
34, respond to the following Requests for Production of Documents, in writing, within fourteen
(14) days of service hereof, pursuant to the order of the Court at the hearing on July 10, 2019.

///

///

1 **REQUEST NO. 133:**

2 Please provide copies of all documents which support, refute, or in any way relate to your
3 Counterclaims.

4 **REQUEST NO. 134:**

5 Please provide copies of all documents which show or relate to each and every payment
6 and/or transfer of money or property made by Plaintiff to you from 2012 to the present, including
7 documents that show where or how that money or property was used after you received it.

8 **REQUEST NO. 135:**

9 Please provide copies of all documents which show or relate to each and every payment
10 and/or transfer of money or property made by you to any other Defendant in this matter, or entity
11 controlled by any other Defendant in this matter, from 2012 to the present. This includes, but is
12 not limited to, documentation related to any reimbursement, salary, or equity distribution from
13 you to any other Defendant in this matter, or entity controlled by any other Defendant or entity in
14 this matter.

15 **REQUEST NO. 136:**

16 Please provide copies of all documents which show or relate to each and every financial
17 transaction and/or transfer of money or property made by you to any other Defendant from 2012
18 to the present.

19 **REQUEST NO. 137:**

20 Please provide copies of all documents which show or relate to each and every financial
21 transaction and/or transfer of money or property made to you by any other Defendant from 2012
22 to the present.

23 ///

EXHIBIT 5

EXHIBIT 5

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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) CASE NO.: A-18-781084-B
Nevada Limited Liability Company,) DEPT NO.: 16
)
Plaintiff,) **DEFENDANT, DEFENDANT LAS VEGAS**
) **DEVELOPMENT FUND, LLC'S**
vs.) **RESPONSES TO PLAINTIFF'S THIRD**
) **SET OF REQUESTS FOR PRODUCTION**
) **OF DOCUMENTS**
LAS VEGAS DEVELOPMENT FUND LLC, a)
Nevada Limited Liability Company; EB5)
IMPACT CAPITAL REGIONAL CENTER)
LLC, a Nevada Limited Liability Company; EB5)
IMPACT ADVISORS LLC, a Nevada)
Limited Liability Company; ROBERT W.)
DZIUBLA, individually and as President and)
CEO of LAS VEGAS DEVELOPMENT FUND)
LLC and EB5 IMPACT ADVISORS)
LLC; JON FLEMING, individually and as)
agent of LAS VEGAS DEVELOPMENT)
FUND LLC and EB5 IMPACT ADVISORS)
LLC; LINDA STANWOOD, individually and)
as Senior Vice President of LAS VEGAS)

1 DEVELOPMENT FUND LLC and EB5)
 2 IMPACT ADVISORS LLC; DOES 1-)
 3 inclusive; and ROE CORPORATIONS 1-)
 4 10, inclusive,)
 5 Defendants.)
 6 _____)
 7 LAS VEGAS DEVELOPMENT FUND LLC,)
 8 Counterclaimant,)
 9 vs.)
 10 FRONT SIGHT MANAGEMENT, LLC, a)
 11 Nevada Limited Liability Company;)
 12 IGNATIUS PIAZZA, as an individual and in)
 13 his capacity as Trustee and/or beneficiary of)
 14 VNV DYNASTY TRUST I and VNV)
 15 DYNASTY TRUST II; JENNIFER PIAZZA, as)
 16 an individual and in her capacity as Trustee)
 17 and/or beneficiary of VNV DYNASTY TRUST)
 18 I and VNV DYNASTY TRUST II; VNV)
 19 DYNASTY TRUST I, an irrevocable Nevada)
 20 trust; VNV DYNASTY TRUST II, an)
 21 irrevocable Nevada trust; and ROES 1 through)
 22 10, inclusive,)
 23 Counterdefendants.)
 24 _____)

25 **PROPOUNDING PARTY: Plaintiff, FRONT SIGHT MANAGEMENT LLC**
 26 **RESPONDING PARTY: Defendant, LAS VEGAS DEVELOPMENT FUND, LLC**
 27 **SET NO: THREE**

28 **GENERAL OBJECTIONS**

29 Defendant, LAS VEGAS DEVELOPMENT FUND, LLC ("Responding Party" or
 30 "Defendant"), makes the following general objections, whether or not separately set forth in
 31 response to each document demand, to each and every definition and document demand in the
 32 Request for Production of Documents (Set No. Three of Plaintiff ("Propounding party")):

1. Responding party objects to the requests generally, and to each and every individual

1 **REQUEST NO. 132:**

2 Please provide copies of all documents which support, refute, or relate to each and every
3 Affirmative Defense you raised in Defendants' Answer to the Second Amended Complaint.

4 **RESPONSE TO REQUEST NO. 132:**

5 Responding party objects to this Document Request because; individually, and in aggregate
6 with the other requests made herein and previously propounded, this request fails to meet the
7 proportionality requirements of proper discovery and thus is over burdensome and harassing; it is
8 compound as to issues and facts; it is vague and ambiguous; it is duplicative of other requests
9 contained herein and previously propounded; it seeks documents that are already in requesting party's
10 possession or equally accessible to the requesting party; it seeks information protected by the attorney-
11 client privilege and/or attorney work product doctrine; it calls for the production of documents that
12 are not relevant to this issues presented; and it purports to require responding party to disclose
13 information that is a trade secret, confidential, proprietary, commercially sensitive, or information that
14 is privileged or protected by rights of privacy regarding financial information and tax records of
15 responding party and/or third parties.
16

17 **REQUEST NO. 133:**

18 Please provide copies of all documents which support, refute, or in any way relate to your
19 Counterclaims.

20 **RESPONSE TO REQUEST NO. 133:**

21 Responding party objects to this Document Request because; individually, and in aggregate
22 with the other requests made herein and previously propounded, this request fails to meet the
23 proportionality requirements of proper discovery and thus is over burdensome and harassing; it is
24 compound as to issues and facts; it is vague and ambiguous; it is duplicative of other requests
25 contained herein and previously propounded; it seeks documents that are already in requesting party's
26 possession or equally accessible to the requesting party; it seeks information protected by the attorney-
27 client privilege and/or attorney work product doctrine; it calls for the production of documents that
28 are not relevant to this issues presented; and it purports to require responding party to disclose

1 information that is a trade secret, confidential, proprietary, commercially sensitive, or information that
2 is privileged or protected by rights of privacy regarding financial information and tax records of
3 responding party and/or third parties.

4 **REQUEST NO. 134:**

5 Please provide copies of all documents which show or relate to each and every payment and/or
6 transfer of money or property made by Plaintiff to you from 2012 to the present, including documents
7 that show where or how that money or property was used after you received it.

8 **RESPONSE TO REQUEST NO. 134:**

9 Responding party objects to this Document Request because; individually, and in aggregate
10 with the other requests made herein and previously propounded, this request fails to meet the
11 proportionality requirements of proper discovery and thus is over burdensome and harassing; it is
12 compound as to issues and facts; it is vague and ambiguous; it is duplicative of other requests
13 contained herein and previously propounded; it seeks documents that are already in requesting party's
14 possession or equally accessible to the requesting party; it seeks information protected by the attorney-
15 client privilege and/or attorney work product doctrine; it calls for the production of documents that
16 are not relevant to this issues presented; and it purports to require responding party to disclose
17 information that is a trade secret, confidential, proprietary, commercially sensitive, or information that
18 is privileged or protected by rights of privacy regarding financial information and tax records of
19 responding party and/or third parties.
20

21 **REQUEST NO. 135:**

22 Please provide copies of all documents which show or relate to each and every payment and/or
23 transfer of money or property made by you to any other Defendant in this matter, or entity controlled
24 by any other Defendant in this matter, from 2012 to the present. This includes, but is not limited to,
25 documentation related to any reimbursement, salary, or equity distribution from you to any other
26 Defendant in this matter, or entity controlled by any other Defendant or entity in this matter.

27 **RESPONSE TO REQUEST NO. 135:**

28 Responding party objects to this Document Request because; individually, and in aggregate

EXHIBIT 6

EXHIBIT 6

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

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

28 FRONT SIGHT MANAGEMENT LLC, a) CASE NO.: A-18-781084-B
Nevada Limited Liability Company,) DEPT NO.: 16
Plaintiff,)
vs.) **DEFENDANT, DEFENDANT LAS VEGAS**
) **DEVELOPMENT FUND, LLC'S**
) **SUPPLEMENTAL RESPONSES TO**
) **PLAINTIFF'S THIRD**
21 LAS VEGAS DEVELOPMENT FUND LLC, a) **SET OF REQUESTS FOR PRODUCTION**
Nevada Limited Liability Company; EB5) **OF DOCUMENTS**
22 IMPACT CAPITAL REGIONAL CENTER)
23 LLC, a Nevada Limited Liability Company; EB5)
24 IMPACT ADVISORS LLC, a Nevada)
Limited Liability Company; ROBERT W.)
25 DZIUBLA, individually and as President and)
CEO of LAS VEGAS DEVELOPMENT FUND)
26 LLC and EB5 IMPACT ADVISORS)
agent of LAS VEGAS DEVELOPMENT)
27 FUND LLC and EB5 IMPACT ADVISORS)
LLC; LINDA STANWOOD, individually and)
28 as Senior Vice President of LAS VEGAS)

- 1 -
DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S SUPPLEMENTAL RESPONSES TO
PLAINTIFF'S THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

1 DEVELOPMENT FUND LLC and EB5
2 IMPACT ADVISORS LLC; DOES 1-
3 inclusive; and ROE CORPORATIONS 1-
4 10, inclusive,

5 Defendants.

6 LAS VEGAS DEVELOPMENT FUND LLC,

7 Counterclaimant,

8 vs.

9 FRONT SIGHT MANAGEMENT, LLC, a
10 Nevada Limited Liability Company;
11 IGNATIUS PIAZZA, as an individual and in
12 his capacity as Trustee and/or beneficiary of
13 VNV DYNASTY TRUST I and VNV
14 DYNASTY TRUST II; JENNIFER PIAZZA, as
15 an individual and in her capacity as Trustee
16 and/or beneficiary of VNV DYNASTY TRUST
17 I and VNV DYNASTY TRUST II; VNV
18 DYNASTY TRUST I, an irrevocable Nevada
19 trust; VNV DYNASTY TRUST II, an
20 irrevocable Nevada trust; and ROES 1 through
21 10, inclusive,

22 Counterdefendants.

23 **PROPOUNDING PARTY: Plaintiff, FRONT SIGHT MANAGEMENT LLC**

24 **RESPONDING PARTY: Defendant, LAS VEGAS DEVELOPMENT FUND, LLC**

25 **SET NO: THREE**

26 **GENERAL OBJECTIONS**

27 Defendant, LAS VEGAS DEVELOPMENT FUND, LLC ("Responding Party" or
28 "Defendant"), makes the following general objections, whether or not separately set forth in
response to each document demand, to each and every definition and document demand in the
Request for Production of Documents (Set No. Three of Plaintiff ("Propounding party")):

1. Responding party objects to the requests generally, and to each and every individual

1 **REQUEST NO. 132:**

2 Please provide copies of all documents which support, refute, or relate to each and every
3 Affirmative Defense you raised in Defendants' Answer to the Second Amended Complaint.

4 **RESPONSE TO REQUEST NO. 132:**

5 Responding party objects to this Document Request because; individually, and in aggregate
6 with the other requests made herein and previously propounded, this request fails to meet the
7 proportionality requirements of proper discovery and thus is over burdensome and harassing; it is
8 compound as to issues and facts; it is vague and ambiguous; it is duplicative of other requests
9 contained herein and previously propounded; it seeks documents that are already in requesting party's
10 possession or equally accessible to the requesting party; it seeks information protected by the attorney-
11 client privilege and/or attorney work product doctrine; it calls for the production of documents that
12 are not relevant to this issues presented; and it purports to require responding party to disclose
13 information that is a trade secret, confidential, proprietary, commercially sensitive, or information that
14 is privileged or protected by rights of privacy regarding financial information and tax records of
15 responding party and/or third parties.
16

17 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the previously asserted
18 objections, Responding Party will produce all non-privileged documents that are responsive to this
19 request.

20 **REQUEST NO. 133:**

21 Please provide copies of all documents which support, refute, or in any way relate to your
22 Counterclaims.

23 **RESPONSE TO REQUEST NO. 133:**

24 Responding party objects to this Document Request because; individually, and in aggregate
25 with the other requests made herein and previously propounded, this request fails to meet the
26 proportionality requirements of proper discovery and thus is over burdensome and harassing; it is
27 compound as to issues and facts; it is vague and ambiguous; it is duplicative of other requests
28 contained herein and previously propounded; it seeks documents that are already in requesting party's

1 possession or equally accessible to the requesting party; it seeks information protected by the attorney-
2 client privilege and/or attorney work product doctrine; it calls for the production of documents that
3 are not relevant to this issues presented; and it purports to require responding party to disclose
4 information that is a trade secret, confidential, proprietary, commercially sensitive, or information that
5 is privileged or protected by rights of privacy regarding financial information and tax records of
6 responding party and/or third parties.
7

8 **SUPPLEMENTAL RESPONSE:** Subject to and without waiving the previously asserted
9 objections, Responding Party will produce all non-privileged documents that are responsive to this
10 request.

11 **REQUEST NO. 134:**

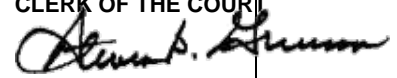
12 Please provide copies of all documents which show or relate to each and every payment and/or
13 transfer of money or property made by Plaintiff to you from 2012 to the present, including documents
14 that show where or how that money or property was used after you received it.

15 **RESPONSE TO REQUEST NO. 134:**

16 Responding party objects to this Document Request because; individually, and in aggregate
17 with the other requests made herein and previously propounded, this request fails to meet the
18 proportionality requirements of proper discovery and thus is over burdensome and harassing; it is
19 compound as to issues and facts; it is vague and ambiguous; it is duplicative of other requests
20 contained herein and previously propounded; it seeks documents that are already in requesting party's
21 possession or equally accessible to the requesting party; it seeks information protected by the attorney-
22 client privilege and/or attorney work product doctrine; it calls for the production of documents that
23 are not relevant to this issues presented; and it purports to require responding party to disclose
24 information that is a trade secret, confidential, proprietary, commercially sensitive, or information that
25 is privileged or protected by rights of privacy regarding financial information and tax records of
26 responding party and/or third parties.

27 ///

28 ///



1 **MSJD**
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6 *Attorneys for Plaintiff/Counterdefendants*

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

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

10 Plaintiff,

11 vs.

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

14 Defendants.

15 AND ALL RELATED COUNTERCLAIMS.

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

MOTION FOR SUMMARY JUDGMENT
AS TO THE COUNTERCLAIMS
AGAINST JENNIFER PIAZZA

HEARING REQUESTED

16 COMES NOW Counterdefendant JENNIFER PIAZZA (“Mrs. Piazza” or “Jennifer”), by
17 and through her attorneys, John P. Aldrich, Esq., and Catherine Hernandez, Esq., of the Aldrich
18 Law Firm, Ltd., and hereby moves the Court for an order granting summary judgment in her
19 favor as to all remaining counterclaims against her.

20 The Court found that Front Sight produced evidence sufficient to show it expended more
21 on the construction project at issue than the monies LVDF has advanced, thus refuting LVDF’s
22 counterclaims against Mrs. Piazza. LVDF is not entitled to prosecute its counterclaims on the
23 gossamer threads of whimsy, speculation and conjecture. Therefore, summary judgment is
24 appropriate.

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

4 DATED this 23rd day of January, 2020.

5 **ALDRICH LAW FIRM, LTD.**

6 /s/ John P. Aldrich
7 John P. Aldrich, Esq.
8 Nevada Bar No. 6877
9 Catherine Hernandez, Esq.
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15 *Attorneys for Plaintiff/Counterdefendants*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I.**

18 **PROCEDURAL HISTORY**

19 On April 23, 2019, LVDF filed its Answer to Plaintiff's Second Amended Complaint.
20 Concurrently therewith, LVDF filed its Counterclaim against Front Sight Management LLC
21 ("Front Sight"), Ignatius Piazza, Jennifer Piazza (Ignatius Piazza's wife), VNV Dynasty Trust I,
22 and VNV Dynasty Trust II (VNV Dynasty Trust I and VNV Dynasty Trust II collectively
23 hereafter the "Trusts"). The counterclaims against Jennifer Piazza and the Trusts includes: (1)
24 Intentional Interference with Contractual Relationships; (2) Civil Conspiracy; (3) Waste; and (4)
Conversion.

On July 3, 2019, Jennifer Piazza filed a Motion to Dismiss the counterclaims. On August
20, 2019, the Court, among other things, heard argument on the Motion to Dismiss LVDF's

1 Counterclaims. After hearing and stipulation of the parties (as to certain claims), the Court
2 granted the Motion to Dismiss in part, and ordered dismissal of LVDF's claims of: (1) Breach of
3 Contract; (2) Breach of the Covenant of Good Faith and Fair Dealing against Front Sight; and (3)
4 Waste as to Jennifer Piazza.

5 Jennifer Piazza filed a responsive pleading to the remaining counterclaims September 30,
6 2019. The remaining counterclaims against Jennifer Piazza are: (1) Intentional Interference with
7 Contractual Relationships; (2) Civil Conspiracy; and (3) Conversion.

8 The Court is well aware of the discovery dispute that has been ongoing in this matter.
9 *See* Front Sight's Motion to Compel and for Sanctions and hearing transcripts related thereto
10 (argued on October 23, 2019, November 21, 2019, November 26, 2019, December 5, 2019,
11 December 11, 2019, and December 18, 2019 and related supplements). Needless to say,
12 although Front Sight first asked for documents to support LVDF's Counterclaims back in July
13 2019, responses being due before the end of July 2019, and multiple extensions, LVDF has
14 provided no documents to support their allegations set forth in the Counterclaims. Regardless,
15 the Court has already ruled that "Front Sight supplied evidence to establish project cost and
16 expenditures which exceed the loan amounts advanced by LVDF." According, LVDF's
17 counterclaims against Jennifer Piazza fail and summary judgment is appropriate.

18 II.

19 UNDISPUTED FACTS

20 The only purpose LVDF had for including Mrs. Piazza in its counterclaim against Mrs.
21 Piazza was to harass her and her husband, Front Sight's principal, Dr. Ignatius Piazza. The
22 following are the scant allegations against Mrs. Piazza, in standard text, with an explanation why
23 the assertion has no merit **in bold**:

- 1 1. Jennifer Piazza is a resident of Sonoma County, California and is trustee and/or
2 beneficiary of VNV Trusts. (Counterclaim, ¶ 7.) **This assertion has no relevance to**
3 **any of the claims, even if true.**
- 4 2. Jennifer Piazza was the personal guarantor for a loan which the Loan proceeds were
5 used to satisfy. (Counterclaim, ¶¶ 21, 43.) **The Court has already found that**
6 **Front Sight “supplied exhibits to establish project cost and expenditures...exceed**
7 **the loan amounts advanced by LV Development...” (See Notice of Entry of**
8 **Findings of Fact, Conclusions of Law, and Order Denying Defendant Las Vegas**
9 **Development Fund LLC's Motion to Dissolve Temporary Restraining Order and**
10 **to Appoint a Receiver, attached hereto as Exhibit 1, p. 3.) Thus, the Court has**
11 **already found that this assertion is false.**
- 12 3. Jennifer Piazza received multi-million dollar distributions as a shareholder.
13 (Counterclaim, ¶ 21.) **Presumably, LVDF meant a shareholder of Plaintiff,**
14 **although LVDF has not alleged Jennifer is a shareholder. But again, the Court**
15 **has already found that Front Sight “supplied exhibits to establish project cost**
16 **and expenditures...exceed the loan amounts advanced by LV Development...”**
17 **(Exhibit 1.) Thus, even if true, this assertion has no relevance to the merits of**
18 **the counterclaims.**
- 19 4. Jennifer Piazza received funds, either directly or indirectly, in a way that violated the
20 CLA Section 5.18. Jennifer Piazza knew about the source of these funds and that the
21 transfers to her violated the terms of the CLA. (Counterclaim, ¶¶ 42, 43.) **Again, the**
22 **Court has already found that Front Sight “supplied exhibits to establish project**
23 **cost and expenditures...exceed the loan amounts advanced by LV**
24

1 **Development....” (Exhibit 1.) Thus, the Court has already found that this**
2 **assertion is false.**

3 5. Jennifer Piazza received Front Sight profits and used EB-5 investor funds in a way
4 that constituted misappropriation of loan proceeds and endangered Front Sight’s
5 solvency. (Counterclaim, ¶ 44.) **Again, the Court has already found that Front**
6 **Sight “supplied exhibits to establish project cost and expenditures...exceed the**
7 **loan amounts advanced by LV Development....” (Exhibit 1.) Thus, the Court**
8 **has already found that this assertion is false.**

9 6. Jennifer Piazza induced Front Sight into improperly using “funds” for her own
10 personal benefit. (Counterclaim, ¶ 70.) **Again, the Court has already found that**
11 **Front Sight “supplied exhibits to establish project cost and expenditures...exceed**
12 **the loan amounts advanced by LV Development....” (Exhibit 1.) Thus, the**
13 **Court has already found that this assertion is false.**

14 7. Jennifer Piazza misappropriated and spent the loan proceeds under the CLA for
15 purposes other than that for which it was intended. (Counterclaim, ¶ 76.) **Again, the**
16 **Court has already found that Front Sight “supplied exhibits to establish project**
17 **cost and expenditures...exceed the loan amounts advanced by LV**
18 **Development....” (Exhibit 1.) Thus, the Court has already found that this**
19 **assertion is false.**

20 8. Jennifer Piazza acted together in concert with Dr. Piazza to “accomplish their
21 unlawful objectives for the purpose of harming” LVDF. (Counterclaim, ¶80.)
22 **Again, the Court has already found that Front Sight “supplied exhibits to**
23 **establish project cost and expenditures...exceed the loan amounts advanced by**
24 **LV Development....” (Exhibit 1.) Thus, the Court has already found that this**

1 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (emphasis added). “Conjecture and speculation do
2 not create an issue of fact.” 127 Nev. at 247, 255 P.3d at 212.

3 This Court has already made factual findings that conclusively resolve all three causes of
4 action brought by LVDF against Jennifer Piazza. Therefore, summary judgment as to all claims
5 is proper and must be granted.

6 **1. Intentional Interference with Contractual Relationships**

7 “In an action for intentional interference with contractual relations, a plaintiff must
8 establish: (1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3)
9 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption
10 of the contract; and (5) resulting damage.” *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71
11 P.3d 1264, 1267 (2003) (citing *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290
12 (1989).

13 LVDF claimed: (1) the CLA (including the 2 Amendments thereto) between Front Sight
14 and LVDF is valid; (2) Jennifer Piazza had knowledge of the CLA and “induced Front Sight to
15 improperly use funds for the personal benefit of . . . Jennifer Piazza;” (emphasis added) (3) Front
16 Sight breached the CLA; (4) the breach was caused by the conduct of Jennifer Piazza; and (5)
17 LVDF sustained damages. (Counterclaim, ¶¶ 68-73.) Each of these allegations is general and
18 conclusory and neither assert any facts nor create a factual dispute. But the key item is #3 above,
19 which can be found at paragraph 70 of the Counterclaim – the assertion that Jennifer “induced
20 Front Sight to improperly use funds for the personal benefit of . . . Jennifer Piazza.”

21 LVDF cannot establish that Jennifer Piazza intentionally interfered with its contractual
22 relations. To the contrary, as described above, the Court has already found that Front Sight
23 “supplied exhibits to establish project cost and expenditures...exceed the loan amounts advanced
24 by LV Development....” (Exhibit 1.) Thus, the Court has already found that the assertions

1 related to this cause of action against Jennifer Piazza are false. Therefore, summary judgment is
2 appropriate because Rule 56(c) requires “sufficient evidence supporting the claimed factual
3 dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth
4 at trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2510 (1986)
5 (citation omitted). Given the Court’s finding that Front Sight established expenses in excess of
6 the loan amount, LVDF’s claim fails.

7 **2. Conversion**

8 Conversion is “a distinct act of dominion wrongfully exerted over another’s personal
9 property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or
10 defiance of such title or rights.” *Boorman v. Nev. Mem’l Cremation Soc’y, Inc.*, 126 Nev. 301,
11 310, 236 P.3d 4, 9 (2010) (citing *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d
12 1043, 1048 (2000) (internal quotations omitted)), *Edwards v. Emperor’s Garden Rest.*, 122 Nev.
13 317, 328, 130 P.3d 1280, 1287 (2006) (citation omitted)).

14 Again, the Court found that Front Sight “supplied exhibits to establish project cost and
15 expenditures...exceed the loan amounts advanced by LV Development...” (Exhibit 1.) Because
16 the Court found Front Sight has spent more on the project than what was loaned by LVDF, there
17 was nothing to convert and LVDF’s counterclaim for conversion against Jennifer Piazza fails as
18 a matter of law. Therefore, the Court should grant summary judgment in favor of Jennifer Piazza
19 as to the conversion counterclaim.

20 **3. Civil Conspiracy**

21 “Actionable civil conspiracy arises where two or more persons undertake some concerted
22 action with the intent to accomplish an unlawful objective for the purpose of harming another,
23 and damage results.” *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 335 P.3d 190, 198-99
24 (Nev. 2014) (quoting *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304,

1 1311, 971 P.2d 1251, 1256 (1998) (internal quotations omitted)). “[A] plaintiff[claimant] must
2 provide evidence of an explicit or tacit agreement between the alleged conspirators.” *Id.*
3 (citation omitted).

4 LVDF cannot defend against summary judgment based on the unsupported allegations in
5 its Counterclaim. “[B]are use of the word ‘conspiracy,’ with no supporting facts that tend to
6 show the existence of an unlawful agreement or prima facie improper behavior” cannot
7 overcome summary judgment. *See Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 301,
8 662 P.2d 610, 621 (1983) (citing *Moran v. Bench*, 353 F.2d 193, 195 (1st Cir. 1965), *cert.*
9 *denied*, 384 U.S. 906 (1966)).

10 Again, the Court found that Front Sight “supplied exhibits to establish project cost and
11 expenditures...exceed the loan amounts advanced by LV Development....” (Exhibit 1.) Based on
12 these findings, LVDF cannot set forth any evidence to show between any Counterdefendants: (1)
13 “an explicit or tacit agreement;” (2) “intent to accomplish an unlawful objective;” and (3) intent
14 to harm LVDF.

15 Summary judgment will be upheld where there is no evidence of an express agreement to
16 commit an unlawful act with the intention to harm. *See Consol. Generator-Nevada v. Cummins*
17 *Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). Therefore, summary judgment
18 in favor of Jennifer Piazza is appropriate as to Civil Conspiracy.

19 IV.

20 CONCLUSION

21 Summary judgment in favor of Jennifer Piazza is appropriate because the Court found
22 that Front Sight “supplied exhibits to establish project cost and expenditures...exceed the loan
23 amounts advanced by LV Development....” (Exhibit 1), and because of this finding, LVDF
24 cannot support the general and conclusory allegations of its counterclaims with any specific

1 evidence to create “a genuine issue of material fact” whereby “a reasonable jury” could find in
2 its favor. *See e.g. Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993).

3 Based on the foregoing, Jennifer Piazza respectfully requests that the Court grant this
4 Motion in its entirety and grant summary judgment in favor of Jennifer Piazza as to the
5 remaining counterclaims against her.

6 DATED this 23rd day of January, 2020.

7 **ALDRICH LAW FIRM, LTD.**

8 /s/ John P. Aldrich

9 John P. Aldrich, Esq.

10 Nevada Bar No. 6877

11 Catherine Hernandez, Esq.

12 Nevada Bar No. 8410

13 7866 West Sahara Avenue

14 Las Vegas, Nevada 89117

15 Telephone: (702) 853-5490

16 Facsimile: (702) 227-1975

17 *Attorneys for Plaintiff/Counterdefendants*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 23rd day of January, 2020, I caused the foregoing
3 **MOTION FOR SUMMARY JUDGMENT AS TO THE COUNTERCLAIMS AGAINST**
4 **JENNIFER PIAZZA** 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

13 C. Keith Greer, Esq.
14 16855 West Bernardo Drive, Suite 255
15 San Diego, CA 92127

16 *Attorneys for Defendants/Counterclaimant*

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

EXHIBIT 1

EXHIBIT 1



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

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

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

10 Plaintiff,

11 vs.

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

13 Defendants.
14 _____
15

16 AND ALL RELATED COUNTERCLAIMS.

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

NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF
LAW, AND ORDER DENYING
DEFENDANT LAS VEGAS
DEVELOPMENT FUND LLC'S
MOTION TO DISSOLVE
TEMPORARY RESTRAINING
ORDER AND TO APPOINT A
RECEIVER

17 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Order
18 Denying Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary
19 Restraining Order and to Appoint a Receiver was entered by the Court in the above-captioned

20 ///

21 ///

22 ///

23 ///

1 action on the 23rd day of January, 2020, a true and correct copy of which is attached hereto.

2 DATED this 23rd day of January, 2020.

3 **ALDRICH LAW FIRM, LTD.**

4 /s/ John P. Aldrich

5 John P. Aldrich, Esq.

6 Nevada Bar No. 6877

7 Catherine Hernandez, Esq.

8 Nevada Bar No. 8410

9 7866 West Sahara Avenue

10 Las Vegas, Nevada 89117

11 Telephone: (702) 853-5490

12 Facsimile: (702) 227-1975

13 *Attorneys for Plaintiff/Counterdefendants*

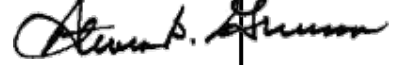
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 23rd day of January, 2020, I caused the foregoing
3 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
4 **ORDER DENYING DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S**
5 **MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO APPOINT**
6 **A RECEIVER** to be electronically filed and served with the Clerk of the Court using Wiznet
7 which will send notification of such filing to the email addresses denoted on the Electronic Mail
8 Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List,
9 to the following parties:

10 Anthony T. Case, Esq.
11 Kathryn Holbert, Esq.
12 FARMER CASE & FEDOR
13 2190 E. Pebble Rd., Suite #205
14 Las Vegas, NV 89123

15 C. Keith Greer, Esq.
16 16855 West Bernardo Drive, Suite 255
17 San Diego, CA 92127
18 *Attorneys for Defendants*

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



1 **FFCL**
2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410
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10 Facsimile: (702) 227-1975
11 *Attorneys for Plaintiff/Counterdefendants*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 vs.

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

15 Defendants.

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER DENYING DEFENDANT
LAS VEGAS DEVELOPMENT FUND
LLC'S MOTION TO DISSOLVE
TEMPORARY RESTRAINING
ORDER AND TO APPOINT A
RECEIVER

16 AND ALL RELATED COUNTERCLAIMS.

17
18 This matter having come before the Court on September 20, 2019 and November 26,
19 2019 on Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary
20 Restraining Order and to Appoint Receiver, John P. Aldrich, Esq. appearing on behalf of
21 Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer, Esq., appearing on behalf of
22 Defendants, the Court having reviewed the pleadings on file herein, having heard oral argument
23 of the parties through their respective counsel, this Court makes the following Findings of Fact
24 and Conclusions of Law.

JAN 10 2020

- 1 g. Alleged Breach #7: Failure to Notify of Event of Default – CLA §5.10
2 (Motion, p. 11);
- 3 h. Alleged Breach #8: Refusal to Allow Inspection of Records – CLA §5.4
4 (Motion, p. 12);
- 5 i. Alleged Breach #9: Refusal to Allow Inspection of the Project – CLA §3.3
6 (Motion, p. 12);
- 7 j. Alleged Breach #10: Failure to Provide EB-5 Information – CLA §1.7(f)
8 (Motion, p. 12);
- 9 k. Alleged Breach #11: Non Payment of Default Interest – CLA §1.2 (Motion, p.
10 12);
- 11 l. Alleged Breach #12: Non Payment of Legal Fees – CLA §8.2 (Motion, p. 12);
12 and
- 13 m. Alleged Breach #13: Failure to Comply with Applicable Laws (CLA §5.13)
14 and Failure to Give Written Notice of Criminal Complaint (CLA §5.14)
15 (Motion, p. 13).

- 16 2. The first allegation of breach focuses on the alleged misuse of loan proceeds by
17 Plaintiff/Counter-Defendant, Front Sight Management, LLC (Front Sight). However,
18 in its Opposition to Defendant/Counter-Claimant LVDF's Motion to Dissolve the
19 TRO and Appoint a Receiver, Front Sight supplied evidence to establish project cost
20 and expenditures which exceed the loan amounts advanced by LVDF.
- 21 3. There are four (4) paragraphs of the Construction Loan Agreement that relate to loan
22 proceeds. They are as follows:
23
24

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

2 (e) Borrower shall use the proceeds of the Loan solely for the purpose
3 of funding directly, or advancing to Affiliates to pay, the costs of the Project, **in**
4 **accordance with the terms and conditions of this Agreement,** as set forth in the
5 Budget and the Project documents submitted to, and approved by, USCIS.
6

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

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

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

(Emphases added.)

4. Exhibit 47 to the Evidentiary Hearing Exhibits, Front Sight's "Response to Notice of Default dated July 30, 2018," shows project costs and expenditures well in excess of \$6.3 million LVDF advanced. In Exhibit C to that document, Front Sight provided

1 copies of QuickBooks monthly reports that showed the following Project costs and
 2 expenditures:

TIME PERIOD	TOTAL
October 2015 – December 2015	\$3,387,591.35
January 2016 – December 2016	\$7,466,570.24
January 2017 – December 2017	\$12,454,018.84
	\$23,308,180.43

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 7 5. Exhibit 48 to the Evidentiary Hearing Exhibits is Front Sight’s “Additional Response
 8 to Notices of Default dated July 31, 2018, and August 24, 2018 and Initial Response
 9 to Notice of Default dated August 28, 2018.” In that exhibit, Front Sight provided to
 10 Defendant Dziubla a multitude of documents showing the following expenses which
 11 were paid by Front Sight between the closing of the loan in October 2016 and June
 12 30, 2017:

EXPENSE CATEGORY	TOTAL
Reimbursable construction costs prior to the closing date of the Construction Loan Agreement	\$994,336.56
Construction costs from the closing date of the Construction Loan Agreement to June 30, 2017	\$1,031,728.10
Class Action lien payoff as of the time of closing of the Construction Loan Agreement	\$551,871.50
Class action lien pay-down prior to the closing date of the Construction Loan Agreement	\$1,860,000.00
Holecek note paydown prior to the closing date of the Construction Loan Agreement	\$6,004,000.00
Holecek note paydown from the closing date of the Construction Loan Agreement to June 30, 2017	\$1,422,000.00
Project legal fees	\$81,551.25
Fees Paid to Chicago Title in connection with original closing	\$9,217.01
EB5 Impact Advisor fees	\$244,730.00
Fees paid to US Capital Partners evidencing efforts to secure “Senior Debt” prior to securing construction line of credit from Morales Construction	\$62,500.00
Project consulting fees	\$82,550.00
	\$12,344,484.42

1 6. Adding construction costs prior to closing with construction costs from closing to
2 June 30, 2017, plus the class action lien payoff as of the closing date of the CLA,
3 Front Sight's expenses far exceed the US\$2.625M in EB5 funds delivered on or
4 before June 30, 2017.

5 7. Exhibit 49 to the Evidentiary Hearing Exhibits is Front Sight's "EB-5 Documentation
6 and Additional Information for the Period July 1, 2017, through October 31, 2018
7 Delivered Pursuant to Section 5.10(e) of the Construction Loan Agreement." In that
8 exhibit, Front Sight provided to Defendant Dziubla several hundred additional pages
9 of documents showing the following expenses which were paid by Front Sight:

EXPENSE CATEGORY	TOTAL
Construction costs from June 30, 2017, through and including July 1, 2018	\$2,088,490.00
Holecek note paydown from June 30, 2017, through and including July 1, 2018	\$1,896,000.00
Project legal fees from June 30, 2017, through and including July 1, 2018	\$14,116.00
Construction costs from July 1, 2018, through and including October 30, 2018	\$402,621.00
Holecek note paydown from July 1, 2018, through and including October 30, 2018	\$632,000.00
Project legal fees from July 1, 2018, through and including October 30, 2018	\$6,984.00
Construction costs from September 6, 2016, through and including August 24, 2018 (commercial revolving charge account of Front Sight established with Home Depot)	\$66,173.67
Construction costs from October 11, 2016, through and including July 13, 2018 (charged to the Visa credit card account of Front Sight established with City National Bank)	\$43,212.07
Construction costs from August 30, 2016, through and including February 20, 2018 (charged to the Premier Rewards Gold charge and credit card account of Front Sight established with American Express)	\$92,868.00
	\$5,242,464.74

22
23 8. Based on this uncontroverted evidence, the Court finds Front Sight's expenses on the
24 Project far exceed the amount of the loan from Defendant LVDF.

1 9. As to the fourth breach alleged by Defendant/Counterclaimant LVDF, the alleged
2 material change in size, scope, and timing of the project, it appears that the size of the
3 classroom was reduced but not the overall size of the facility, and therefore, the Court
4 finds that there is an issue of fact as to this alleged breach of the CLA.

5 10. Regarding the second, third, and fifth through thirteenth alleged breaches, as asserted
6 by Defendant/Counterclaimant LVDF, the parties asserted multiple competing factual
7 positions and made conflicting factual assertions regarding Defendant LVDF's
8 allegations of breach of the CLA. Based on the state of the evidence as of the date of
9 the hearing on the instant Motion, the Court finds that genuine issues of fact remain
10 as to the second, third, and fifth through thirteenth alleged breaches, as asserted by
11 Defendant/Counterclaimant LVDF.

12 **CONCLUSIONS OF LAW AND ORDER**

13 The Court makes the following Conclusions of Law:

14 1. Regarding alleged Breach #1, the Court concludes that Front Sight's expenses on
15 the Project far exceed the amount of the loan from Defendant LVDF has Defendant LVDF's
16 assertion that Front Sight improperly used loan proceeds is without merit, and consequently,
17 LVDF has failed to establish this alleged breach.

18 2. As to the second, third, and fifth through thirteenth alleged breaches, as asserted
19 by Defendant/Counterclaimant LVDF, the Court concludes that LVDF has not established that
20 Plaintiff is in breach of the Construction Loan Agreement, and consequently, LVDF is not
21 entitled to the relief it seeks by this Motion.

22 4. Regarding the fourth alleged breach, pertaining to the reduction in the size of the
23 Patriot Pavilion, because it appears that the size of the classroom was reduced but not the overall
24

1 size of the facility, creating an issue of fact as to this alleged breach, the Court concludes that
2 LVDF has not established that Plaintiff is in breach of the construction Loan Agreement, and
3 consequently, LVDF is not entitled to the relief it seeks by this Motion.

4 **ORDER**

5 **IT IS HEREBY ORDERED** that Defendant Las Vegas Development Fund LLC's
6 Motion to Dissolve Temporary Restraining Order and to Appoint Receiver is DENIED.


7 **IT IS SO ORDERED.**

8 DATED this 22nd day of January, 2020.

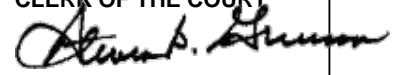
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10 
11 DISTRICT COURT JUDGE
12 

13 Respectfully submitted by:

14 **ALDRICH LAW FIRM, LTD.**

15 

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

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

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

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

Defendants.

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

**DEFENDANT AND
COUNTERCLAIMANT LVD FUND'S
OBJECTIONS TO PLAINTIFF AND
COUNTERDEFENDANT'S STATEMENT
OF UNDISPUTED FACTS**

Date:
Time: 9:15 a.m.

AND RELATED COUNTERCLAIMS

1 **DEFENDANT OBJECTIONS TO THE PLAINTIFF’S “UNDISPUTED”**

2 **STATEMENT OF FACTS:**

#	Front Sight Management, LLC’s Facts	Defendants’ Objections
3 4 5 6 7 8 9	1 On September 28, 2012, Defendants stated: “[W]e are currently working on a handful of other select projects totaling over \$250m of EB-5 debt financing. ” (See e-mail correspondence dated September 28, 2012, attached hereto as Exhibit 1, at FS 01211; Evid. Hrg. Exhibit 55 (emphasis added).)	Objection: Misstates evidence. “[W]e” referred to Liberty West Regional Center, not “Defendants.” In addition, “Defendants” (all of them) did not make the quoted statement as alleged.
10 11 12 13 14 15	2 That same September 28, 2019 e-mail claimed that Defendants had involvement in two projects, one a “ \$21 m raise ” where “ all 42 Chinese investors ” had funds “ into escrow within 65 days of our going to market. ” (See e-mail correspondence dated September 28, 2012, attached hereto as Exhibit 1, at FS 01211; Evid. Hrg. Exhibit 55 (emphasis added).)	Objection: Best Evidence. Misstates evidence. This statement is referring to Liberty West Regional Center, not “Defendants.” In addition, “Defendants” (all of them) did not make the quoted statement as alleged.
16 17 18 19 20 21 22 23 24 25 26 27 28	3 After Front Sight initially declined Defendants’ attempt to convince Front Sight to use EB-5 financing for its project, Defendants persisted and represented to Front Sight that they were experts who could raise \$150 million. (Piazza testimony, September 20, 2019 Evid. Hrg. Tr., pp. 93-94, 97.)	Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “ Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement. ” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed

1		evidence violates the parol evidence rule and should not be considered by the court.	
2			
3	4	Defendant Fleming had no experience with EB-5 <i>lending</i> prior to joining EB5IA. (June 3, 2019 Evid. Hrg. Tr., p. 26; November 20, 2019 Evid. Hrg. Tr., p. 9, ls. 3-21.) (emphasis added)	Objection: Misstates testimony, Irrelevant the Engagement Agreement was to advise on <i>raising</i> EB5 capital.
4			
5			
6	5	Defendant Dziubla testified that “This was our first direct project [in EB-5 lending].” (June 3, 2019 Evid. Hrg. Tr., p. 38.) Dziubla confirmed a second time that it was his and Fleming’s first project.	Objection: Misstates testimony, Irrelevant the Engagement Agreement was to advise on <i>raising</i> EB5 capital.
7			
8			
9	6	Defendant Dziubla clarified his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (June 3, 2019 Evid. Hrg. Tr., p. 39.)	Objection: Misstates testimony, Irrelevant the Engagement Agreement was to advise on <i>raising</i> EB5 capital.
10			
11			
12			
13	7	Defendant Fleming has never brought an EB-5 project to successful completion. (November 20, 2019 Evid. Hrg. Tr., p. 83, ls. 14-17.)	Objection: Misstates testimony, Irrelevant the Engagement Agreement was to advise on <i>raising</i> EB5 capital.
14			
15			
16	8	When asked about the representation in the September 28, 2012 e-mail that “we [Defendants] are currently working on a handful of other select project totaling over \$250 m of EB-5 debt financing,” Defendant Fleming clearly stated “I don’t know what that references.” (November 20, 2019 Evid. Hrg. Tr., p. 91, l. 17.)	Objection: Misstates testimony, Irrelevant.
17			
18			
19			
20			
21	9	Discussing the claim that Defendants had “never failed to complete a raise nor had a foreign investor’s EB-5 visa denied,” Defendant Fleming flatly stated: “I don’t know what the basis of that statement is.” (November 20, 2019 Evid. Hrg. Tr., p. 95, ls. 8-9.)	Objection: Misstates testimony, Irrelevant.
22			
23			
24			
25			
26	10	Defendant Fleming also admitted that Defendants have never sourced an investor from Asia. (November 20, 2019 Evid. Hrg. Tr., p. 95, l. 15.)	Objection: Misstates testimony, Irrelevant.
27			
28			

1 2 3 4 5 6 7	<p>11 Still related to the September 28, 2012 e-mail, Defendant Fleming acknowledged that he had no basis for the representation that Defendants had obtained \$21 million in EB-5 funds within 65 days of going to market, or the alleged \$7 million raise referenced there. (November 29, 2019 Evid. Hrg. Tr., pp. 90-91.) Rather, he had no knowledge and just assumed that it was accurate. (November 20, 2019 Evid. Hrg. Tr., pp. 92, ls. 18-19; pp. 93-94.)</p>	<p>Objection: Misstates testimony, Irrelevant.</p>
8 9 10 11 12	<p>12 Despite the claims of handling \$10 billion worth of transactions and 8 transactions in the year before the April 7, 2012 e-mail, Dziubla and Fleming failed to inform Front Sight that NONE of those transactions involved EB-5 financing.</p>	<p>Objection: Assumes facts not in evidence and Misstates Evidence, because Dziubla never represented that \$10 billion worth of transactions was raised by EB5 investment, nor did he have the obligation to do so. Further, the email where the representation was made (not cited) is the best evidence.</p>
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	<p>13 Defendants do NOT have an expansive network of relationships. To the contrary, Defendants were working to retain an agent for Ukraine and Russia in September 2015. (Evid. Hrg. Exhibit 44, at Contracts (2)00062-63.) Defendants did not retain Mayflower Business Consulting, Co. Ltd. until October 2015. (Evid. Hrg. Exhibit 44, at Contracts (2)00052.) Around that same time, Defendants retained Williams Global Law, PLLC to assist with creating a network in China and Brazil. (June 3, 2019 Evid. Hrg. Tr., p. 112, l. 21 – p. 113, l. 15; p. 118, l. 16 – p. 120, l. 5; Evid. Hrg. Exhibit 46, at (EB5ICA)00169- 00177.) All of that occurred after USCIS approval in June 2015. Likewise, in January 2016, Defendants retained Ethan Devine as an independent contractor to conduct business development for Defendants’ projects, attempt to cultivate a network of agents to obtain investors for Plaintiff’s project, and assist in various aspects of Defendants’ other projects. (Evid. Hrg. Exhibit 44, at Contracts (2)00046.)</p>	<p>Objection: Assumes facts not in evidence and Misstates Evidence, because Dziubla and Fleming had numerous immigration agents prior to the Front Sight deal and failing to disclose such agents does not de facto prove their non-existence.</p>

28

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p>	<p>14 Defendants lied about the amount of money they could raise.</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>15 On August 27, 2012, Dziubla sent another one that stating that he was capable of raising up to \$150 million to fund the Project; specifically, Dziubla claimed “we may well be able to put together a financing package for some, or perhaps all, of the \$150m you were seeking to raise.” (Evid. Hrg. Exhibit 2, at 00002 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p>	<p>16 On September 13, 2012, Defendants Dziubla and Fleming represented that they could raise a “first tranche [of] about \$65mn[sic]” and a “follow-on \$100m” would be raised in the next two phases. (Evid. Hrg. Exhibit 3, at 00005.)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that ““Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>17 In that September 13, 2012 letter, Defendants represented that in Q1 of 2012, \$1.2 billion in EB-5 funds came from China, and “we can expect about \$3.36 billion of EB-5 money to be invested into the US from Chinese investors.” (Evid. Hrg. Exhibit 3, at 00005 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that ““Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p>	<p>18 Later in the September 13, 2012 letter, Defendants represented that “we will be able to structure the \$65m of EB-5 financing as non-recourse debt...” (Evid. Hrg. Exhibit 3, at 00007 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>19 In an e-mail on September 28, 2012, Defendants represented that “just one of our placement agents in China has had over 21,000 EB-5 visa applicants during the past several years. . . . Given this massive demand in China for EB-5 visas, sourcing 130 investors for a long-established and successful business that is implementing a well conceived project such as the Front Sight resort should not be difficult.” (See e-mail correspondence dated September 28, 2012, attached hereto as Exhibit 1, at FS 01211; Evid. Hrg. Exhibit 55 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p>	<p>20 On October 24, 2012, Defendants stated: “Jon and I would like to work expeditiously with you and Front Sight to identify a suitable regional center for your hospitality project and raise \$65m of EB-5 money for that.” (See Exhibit 2, at FS 01223.)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>21 On December 27, 2012, Dziubla and Fleming sent an e-mail to Front Sight stating that they were “working on an indicative timeline” for “the raise of up to \$75m (interest reserve included) of EB-5 immigrant investor financing.” (Evid. Hrg. Exhibit 4, at 00010 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p>	<p>22 On January 31, 2013, Defendants stated: “Please find attached the updated budget with a projected monthly breakdown of the cost expenditures; this breakdown assumes that USCIS moves expeditiously, which means that the full \$75m would be raised by Day 361; thus, the costs are incurred in the first 10 months. If USCIS is slower, than[sic] this burn rate would slow down a bit.” (See e-mail correspondence dated January 31, 2013, attached hereto as Exhibit 3, at FS 01287-01291 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>23 On February 8, 2013, Dziubla and Fleming provided a draft proposal for “the \$75m raise of EB5 debt financing.” (Evid. Hrg. Exhibit 5, at 00011 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15</p>	<p>24 The February 14, 2013 Engagement Letter, which Front Sight eventually signed, represented that the parties were confirming “our [Defendants] raising \$75 million of debt financing for Front Sight...” and references the EB-5 program. (Evid. Hrg. Exhibit 6, at 00020 (emphasis added).)</p>	<p>Objection. Misstates the terms of the Engagement Letter. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that ““Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>25 Schedule A to the Engagement Letter identified the “Development Budget/Capital Stack” as “\$75m – EB-5 financing” and the Loan Amount as \$75m. (Evid. Hrg. Exhibit 6, at 00025 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that ““Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis</p>

1 2		added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
3 4 5 6 7 8 9 10 11 12 13 14 15 16	26 After Front Sight initially declined Defendants’ attempt to convince Front Sight to use EB-5 financing for its project, Defendants persisted and represented to Front Sight that they were experts who could raise \$150 million . (Piazza testimony, September 20, 2019 Evid. Hrg. Tr., pp. 93-94, 97.)	Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
17 18 19 20 21 22 23 24 25 26 27 28	27 Defendants represented that they had a vast network of agents who could fully fund the project. (Piazza testimony, September 20, 2019 Evid. Hrg. Tr., pp. 106-107.)	Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis

1		added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
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3	28	It is undisputed that Defendants only provided Front Sight \$6.3 million.
4		Not Disputed [\$6.375 MILLION]
5	29	Defendants claim to have raised an additional \$1.5 million to \$2 million but concealed from Front Sight that they had received the funds. Then, when Front Sight learned of the funds, Defendants refused to provide those funds to Front Sight despite the absence of any breaches at the time the money came in. (June 3, 2019 Evid. Hrg. Tr., p. 156, l. 2 – p. 158, l. 13.)
6		Objection: Misstates Testimony, the notification was withheld because Front Sight failed its reporting requirement under the CLA and that is an event of default the occurred and was ongoing. (§3.1 CLA)
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10	30	Defendant Fleming had no experience with EB-5 lending prior to joining EB5IA. (June 3, 2019 Evid. Hrg. Tr., p. 26; November 20, 2019 Evid. Hrg. Tr., p. 9, ls. 3-21.)
11		Duplicate, See #4
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13	31	Defendant Dziubla testified that “This was our first direct project [in EB-5 lending].” (June 3, 2019 Evid. Hrg. Tr., p. 38.) Dziubla confirmed a second time that it was his and Fleming’s first project
14		Duplicate, See #5
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17	32	Defendant Dziubla clarified his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (June 3, 2019 Evid. Hrg. Tr., p. 39.)
18		Duplicate, See #6
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21	33	Defendant Fleming has never brought an EB-5 project to successful completion. (November 20, 2019 Evid. Hrg. Tr., p. 83, ls. 14-17.)
22		Duplicate, See #7
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24	34	Despite the claims of handling \$10 billion worth of transactions and 8 transactions in the year before the April 7, 2012 e-mail, even assuming those claims are true, Dziubla and Fleming failed to inform Front Sight that NONE of those transactions involved EB-5 financing. Defendant Dziubla testified that “This was our first direct project [in EB-5 lending].” (June 3,
25		Duplicate, See #12
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1		2019 Evid. Hrg. Tr., p. 38.)	
2	35	Defendants did NOT disclose that they accounted for exactly \$0 of the \$1.2 billion raised through EB-5 in Q1 in 2012 was raised by Defendants. (June 3, 2019 Evid. Hrg. Tr., p. 63, l. 15 – p. 64, l. 9.)	Objection: Irrelevant, Defendant was under no duty to disclose such a fact.
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5	36	Defendants’ December 27, 2012 representation was careful to mention the “interest reserve” was included in the amount; it did not qualify the possibility of raising the \$75 million.	Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
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19	37	Front Sight’s expert witness, Catherine Holmes, Esq., opined, “The Engagement Agreement (Exhibit 5 of the Declaration) contains an estimated timeline showing that \$75 million in EB-5 financing would be raised between 4 months from the earliest expected approval of the regional center and 6 months from the latest expected approval of the regional center. Those estimates wildly misrepresented the normal time necessary to raise \$75 million in EB-5 financing. In 2013, only the very largest and most experienced regional centers could raise that much in EB-5 financing, based upon their track record of prior successful EB-5 financings.	Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a
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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15</p>	<p>Most new regional centers either failed to raise any financing at all or would start with very small offerings (\$5 million to \$10 million) and gradually raise larger EB-5 financings as they become known in the EB-5 financing market. Even for well-known regional center operators, it is not unusual for an EB-5 financing, even one sponsored by an experienced EB-5 sponsor, to take a year or more before it gains acceptance in the EB-5 financing market.” (See February 21, 2019 Expert Witness Report of Catherine Holmes, Esq., attached hereto as Exhibit 4, at p. 2, ¶ 5 (emphasis added).)</p>	<p>representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p> <p>NRCP Rule 43(c) permits evidence on motions to be presented by affidavit. Local Rule 2.21(a) provides “[f]actual contentions involved in any pretrial or post-trial motion must be initially presented and heard upon affidavits [or] unsworn declarations under penalty of perjury . . .” NV ST 8 DIST CT Rule 2.21(emphasis added). The “expert report” of Catherine DeBono Holmes, which Plaintiff relies heavily upon throughout its Motion, does not have an authenticating affidavit or declaration and the expert report itself is NOT sworn to under penalty of perjury. Such an unsworn document is incompetent evidence and should not be relied upon.</p>
<p>16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>38 Despite their repeated representations of how much they would raise, Dziubla and Fleming had “no idea” how much money they would really be able to raise. (June 3, 2019 Evid. Hrg. Tr., p. 169.)</p>	<p>Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule</p>

1		and should not be considered by the court.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	<p>39 On March 22, 2012, Dziubla sent an email, apparently as a representative of Kenworth Capital, Inc. (a non-party entity controlled by Defendant Dziubla) stating: “Because we have confidence in our ability to help you raise the money sought, we are willing to work on a pure success fee basis that compensates us for the speculative risk we are undertaking.” (See e-mail correspondence dated March 22, 2012, attached hereto as Exhibit 5, at FS 01163 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
16 17 18 19 20 21 22 23 24 25 26 27 28	<p>40 On April 7, 2012, Dziubla sent another email, stating “We would enjoy the chance to work with Front Sight on this development and have attached a proposed engagement letter that, as previously discussed, is on a success fee basis so that we don’t get paid unless we raise the financing.” Dziubla and Fleming assured Front Sight they would work “without compensation” until they succeeded in raising the money. (Evid. Hrg. Exhibit 2, at 0004 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule</p>

1		and should not be considered by the court.
2	41	In the September 13, 2012 letter, Defendants represented “ we don’t make any money until we have successfully raised the \$65m.... ” (Evid. Hrg. Exhibit 3, at 00007 (emphasis added).)
3		Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “ Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement. ” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
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16	42	Near the end of the September 13, 2012 letter, Defendants claim they “ have the luxury ... of picking and choosing the EB-5 projects we want to accept, and we accept only those projects that we think will be readily funded since we don’t get paid otherwise. ” (Evid. Hrg. Exhibit 3, at 00008 (emphasis added).)
17		Duplicate, See #8
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21	43	Defendant Dziubla destroyed the financial documents of Defendant EB5IA; according to him that was pursuant to a “document retention policy” that he claims allowed him to destroy the records. (June 3, 2019 Evid. Hrg. Tr., p. 48, l. 12 – p. 49, l. 20.)
22		Objection: Irrelevant.
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25	44	Defendant Fleming testified that no such policy existed to destroy Defendant EB5IA’s documents, and rather, testified that they kept excellent records. (November 20, 2019 Evid. Hrg. Tr., p. 36, l. 4 – p. 37, l. 23.)
26		Objection: Irrelevant.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14	<p>45 After the Court ordered an accounting of EB5IA’s use of Front Sight’s funds, Defendants EB5IA and Dziubla provided some documents. The deficient records Defendants Dziubla and EB5IA provided showed Dziubla and Fleming paid themselves out of Front Sight’s funds, contrary to their representations. (See October 18, 2019 Expert Witness Report of Douglas Winters, CPA, attached hereto as Exhibit 6, at p. 6, ¶ 8.)</p>	<p>Objection: Irrelevant, the court held EB5IA’s accounting was sufficient.</p> <p>Misstates the Transcript. The court held EB5IA’s accounting was sufficient.</p> <p>NRCP Rule 43(c) permits evidence on motions to be presented by affidavit. Local Rule 2.21(a) provides “[f]actual contentions involved in any pretrial or post-trial motion must be initially presented and heard upon affidavits [or] unsworn declarations under penalty of perjury . . .” NV ST 8 DIST CT Rule 2.21(emphasis added). The “expert report” of Douglas Winter, which Plaintiff relies heavily upon throughout its Motion, does not have an authenticating affidavit or declaration and the expert report itself is NOT sworn to under penalty of perjury. Such an unsworn document is incompetent evidence and should not be relied upon</p>
15 16 17 18 19 20 21 22	<p>46 Defendant Dziubla admitted that Front Sight paid \$20,000 specifically for an economic study, that a professor named Sean Flynn received a 20% interest in the regional center for producing the report, and that Dziubla spent the \$20,000 on “operating expenses” instead of paying it to Sean Flynn. Defendant Dziubla did not disclose to Front Sight that he kept the money for “operating expenses.” (June 3, 2019 Evid. Hrg. Tr., p. 35, l. 11 – p. 38, l. 17.)</p>	<p>Objection: Irrelevant.</p>
23 24 25 26	<p>47 There is no dispute that Front Sight paid at least \$250,000 for the regional center (June 3, 2019 Evid. Hrg. Tr., p. 46, ls. 7-22), and that Defendants Dziubla and Fleming paid themselves from those funds.</p>	<p>Objeciton: Assumes facts not in evidence, misstates testimony, improper legal conclusion, and improper expert opinion to the extent financial records need to be interpreted. Moreover, Mr. Aldrich’s personal opinion with no citation to the record is not evidence.</p>
27 28	<p>48 Defendants’ representation that “our direct out-of-pocket cost to do an EB-5 raise is</p>	<p>Objection: Assumes facts not in evidence, misstates testimony, improper legal</p>

1 2 3 4 5 6	typically \$300k (paid upfront), as we need to engage a number of providers immediately as well as conduct an international roadshow,” had no basis, as Defendants Dziubla and Fleming had no experience with EB-5 lending. (See Evid. Hrg. Exhibit 3, at 0007; June 3, 2019 Evid. Hrg. Tr., pp. 26, 38-39; November 20, 2019 Evid. Hrg. Tr., p. 9, ls. 3-21.)	conclusion, and improper expert opinion to the extent of EB5 customs and practices. Moreover, Mr. Alldrich’s personal opinion with no citation to the record is not evidence.
7 8 9 10 11 12 13 14 15 16	49 Front Sight’s expert witness, Catherine Holmes, Esq., contradicts this by stating that the \$300,000 Defendants represented to Front Sight is “a substantially inflated estimate of direct-out-of-pocket costs, and that it is not customary for an amount this large to be paid up front. I believe that this estimate was a misrepresentation of the true costs of an EB-5 offering intended to mislead the Plaintiff into paying substantially more upfront than it would pay to a legitimate EB-5 funding provider.” (See Exhibit 4, at p. 1, ¶ 2 (emphasis added).)	NRCPC Rule 43(c) permits evidence on motions to be presented by affidavit. Local Rule 2.21(a) provides “[f]actual contentions involved in any pretrial or post-trial motion must be initially presented and heard upon affidavits [or] unsworn declarations under penalty of perjury . . . ” NV ST 8 DIST CT Rule 2.21(emphasis added). The “expert report” of Catherine DeBono Holmes, which Plaintiff relies heavily upon throughout its Motion, does not have an authenticating affidavit or declaration and the expert report itself is NOT sworn to under penalty of perjury. Such an unsworn document is incompetent evidence and should not be relied upon.
17 18 19 20 21 22 23 24 25 26 27 28	50 The February 14, 2013 Engagement Letter contained language regarding the establishment of a Regional Center. Ms. Holmes’ expert report states, in part, “The establishment of a regional center is a highly unusual provision in an engagement letter to provide EB-5 financing to a third party, and the cost of establishment of the regional center is, in my experience, always paid for by the owner of the regional center, not the party seeking financing. These provisions indicate that EB5IA mislead the Plaintiff into believing that this was a normal part of an EB-5 financing, which it was not. ” (See Exhibit 4, at pp. 1-2, ¶ 3 (emphasis added).)	Objection. Misstates evidence. Best Evidence Rule. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “ Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the

1 2 3		<i>Services detailed in this Agreement.</i> ” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
4 5 6 7 8 9 10 11 12 13 14 15 16 17	51 d. Defendants lied about the amount of time it would take to raise the money:	DISPUTED Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement. ” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
18 19 20 21 22 23 24 25 26 27 28	52 On April 7, 2012, Dziubla and Fleming claimed it would take them 60-90 days to craft a presentation, but that “fund raising will commence immediately thereafter,” with the first phase taking as much as 6-12 months or as little as 3 months. (Evid. Hrg. Exhibit 2, at 00003 (emphasis added).)	Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA

1 2 3 4		<p><i>will be able to perform successfully the Services detailed in this Agreement.”</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
5 6 7 8 9 10 11 12 13 14 15 16 17 18	<p>53 On September 13, 2012, Defendant Dziubla represented (and Fleming failed to correct the misrepresentation) that “EB-5 funding initiatives typically take 5-8 months before first funds are placed into escrow with the balance of the funds being deposited during the next 6-8 months.” (Evid. Hrg. Exhibit 3, at 00006 (emphasis added).)</p>	<p>Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that ““Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
19 20 21 22 23 24 25 26 27 28	<p>54 On January 31, 2013, Defendants stated: “Please find attached the updated budget with a projected monthly breakdown of the cost expenditures; this breakdown assumes that USCIS moves expeditiously, which means that the full \$75m would be raised by Day 361; thus, the costs are incurred in the first 10 months. If USCIS is slower, than[sic] this burn rate would slow down a bit.” (See Exhibit 3 (emphasis added).)</p>	<p>Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that ““Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA</i></p>

1 2 3 4		<p><i>will be able to perform successfully the Services detailed in this Agreement.”</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<p>55 The Timeline that is part of the February 14, 2013 Engagement Letter represented that the USCIS application would be submitted on Day 90. (Evid. Hrg. Exhibit 6, at 00027 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the evidence. Best Evidence Rule. Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
20 21 22 23 24 25 26 27 28	<p>56 The Timeline also provides that USCIS approval will occur between the “Earliest” Day 240 and “Latest” Day 330 after signing of the Engagement Letter. (Evid. Hrg. Exhibit 6, at 00027 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the evidence. Best Evidence Rule. Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that</p>

1 2 3 4 5 6		<p><i>any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	<p>57 The Timeline also represents that Road Shows in China will occur between Days 241 and 361. (Evid. Hrg. Exhibit 6, at 00027 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the evidence. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that <i>“Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.”</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
22 23 24 25 26 27 28	<p>58 The Timeline represents that at the “Earliest” Day 361 and “Latest” Day 510, “Entire \$75m raised from EB-5 investors, deposit into escrow, and disbursement to Front Sight for the project.” (Evid. Hrg. Exhibit 6, at 00027 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the evidence. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that <i>“Nothing contained in this Agreement</i></p>

1		<i>is to be construed as a commitment</i> by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.	
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10	59	The Timeline also represents that Day 510 is “6 months from latest expected RC [regional center] approval date.” (Evid. Hrg. Exhibit 6, at 00027.)	Objection. Misstates and mischaracterizes the evidence. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that <i>“Nothing contained in this Agreement is to be construed as a commitment</i> by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
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24	60	Defendant Fleming had no experience with EB-5 lending prior to joining EB5IA. (June 3, 2019 Evid. Hrg. Tr., p. 26; November 20, 2019 Evid. Hrg. Tr., p. 9, ls. 3-21.)	Duplicate, See #4
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27	61	Defendant Dziubla testified that “This was our first direct project [in EB-5 lending].”	Duplicate, See #5
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1	(June 3, 2019 Evid. Hrg. Tr., p. 38.)	
2	Dziubla confirmed a second time that it	
3	was his and Fleming’s first project.	
4	62 Defendant Dziubla clarified his testimony a	Duplicate, See #6
5	little, stating that besides the Front Sight	
6	Project and the single project at Baker &	
7	McKenzie in 1990, Dziubla had no	
8	experience in EB-5 lending. (June 3, 2019	
9	Evid. Hrg. Tr., p. 39.)	
10	63 Defendant Fleming has never brought an	Duplicate, See #7
11	EB-5 project to successful completion.	
12	(November 20, 2019 Evid. Hrg. Tr., p. 83,	
13	ls. 14-17.)	
14	64 Despite the claims of handling \$10 billion	Duplicate, See #12
15	worth of transactions and 8 transactions in	
16	the year before the April 7, 2012 e-mail,	
17	Dziubla and Fleming failed to inform Front	
18	Sight that NONE of those transactions	
19	involved EB-5 financing. Defendant	
20	Dziubla testified that “This was our first	
21	direct project [in EB-5 lending].” (June 3,	
22	2019 Evid. Hrg. Tr., p. 38.)	
23	65 Defendants did not even submit the	Objection: Irrelevant.
24	application to the USCIS until at least April	
25	16, 2014 – well beyond the 90 days	
26	represented by Defendants. (Evid. Hrg.	
27	Exhibit 7.)	
28	66 Front Sight’s expert witness, Catherine	Duplicate, See #37
	Holmes, Esq., opined, “The Engagement	
	Agreement (Exhibit 5 of the Declaration)	
	contains an estimated timeline showing that	
	\$75 million in EB-5 financing would be	
	raised between 4 months from the earliest	
	expected approval of the regional center	
	and 6 months from the latest expected	
	approval of the regional center. Those	
	estimates wildly misrepresented the	
	normal time necessary to raise \$75	
	million in EB-5 financing. In 2013, only	
	the very largest and most experienced	
	regional centers could raise that much in	
	EB-5 financing, based upon their track	
	record of prior successful EB-5 financings.	

1 2 3 4 5 6 7 8 9	<p>Most new regional centers either failed to raise any financing at all or would start with very small offerings (\$5 million to \$10 million) and gradually raise larger EB-5 financings as they become known in the EB-5 financing market. Even for well-known regional center operators, it is not unusual for an EB-5 financing, even one sponsored by an experienced EB-5 sponsor, to take a year or more before it gains acceptance in the EB-5 financing market.” (See February 21, 2019 Expert Witness Report of Catherine Holmes, Esq., attached hereto as Exhibit 4, at p. 2, ¶ 5 (emphasis added).)</p>	
10 11 12 13 14 15 16 17 18 19	<p>67 Ms. Holmes’ expert report also noted, “EB5IA could have entered into an agreement with one of several regional centers that were already approved to be sponsor projects..., but for unexplained reasons, EB5IA chose not to enter into an agreement with an existing regional center, and instead to file a regional center application that would require it to delay marketing for over a year.” (See Exhibit 4, at p. 2, ¶ 4 (emphasis added).)</p>	<p>NRCP Rule 43(c) permits evidence on motions to be presented by affidavit. Local Rule 2.21(a) provides “[f]actual contentions involved in any pretrial or post-trial motion must be initially presented and heard upon affidavits [or] unsworn declarations under penalty of perjury . . .” NV ST 8 DIST CT Rule 2.21(emphasis added). The “expert report” of Catherine DeBono Holmes, which Plaintiff relies heavily upon throughout its Motion, does not have an authenticating affidavit or declaration and the expert report itself is NOT sworn to under penalty of perjury. Such an unsworn document is incompetent evidence and should not be relied upon.</p>
20 21 22	<p>68 Defendants represented that they were partners with Empyrean West (Dave Keller and Jay Carter). (Evid. Hrg. Exhibit 3, at 00006 (emphasis added).)</p>	<p>Objection: Best Evidence</p>
23 24 25 26 27	<p>69 Defendants represented that Empyrean West was “authorized by the Vietnamese government to act as the exclusive EB-5 firm in Vietnam and has been exempted from the \$5,000 limit on international money transfers.” (Evid. Hrg. Exhibit 3, at 00006 (emphasis added).)</p>	<p>Objection: Best evidence.</p>

1	70	Defendant Dziubla admitted Defendants and Emyrean West were actually not partners, but rather, “[i]t was a two-person operation.” (June 3, 2019 Evid. Hrg. Tr., p. 30, ls. 8- 13.)	Objection: Assumes facts not in evidence, and mischaracterizes evidence.
4	71	Front Sight’s expert, Catherine Holmes, Esq., proves the falsity of Defendants’ statements, stating, in part, “Emyrean West was not and is not the exclusive EB-5 firm in Vietnam.” (See Exhibit 4, at p. 1, ¶ 1; see also September 19, 2019 Supplemental Expert Witness Report of Catherine Holmes, Esq. (authenticating the February 21, 2019 expert witness report), attached hereto as Exhibit 8, at p. 1, ¶ 4.)	NRCP Rule 43(c) permits evidence on motions to be presented by affidavit. Local Rule 2.21(a) provides “[f]actual contentions involved in any pretrial or post-trial motion must be initially presented and heard upon affidavits [or] unsworn declarations under penalty of perjury . . . ” NV ST 8 DIST CT Rule 2.21(emphasis added). The “expert report” of Catherine DeBono Holmes, which Plaintiff relies heavily upon throughout its Motion, does not have an authenticating affidavit or declaration and the expert report itself is NOT sworn to under penalty of perjury. Such an unsworn document is incompetent evidence and should not be relied upon.
15	72	Front Sight has asked repeatedly for documents to support this assertion but Defendants have provided none. (See Plaintiff’s Third Set of Requests for Production of Documents to Defendant LVDF, Request Nos. 117, 119, 185.) ² The only response from Defendants has been a series of boilerplate objections. Accordingly, the Court can conclude that no documents exist.	Objection: Irrelevant, lacks foundation, and assumes facts not in evidence.
21	73	Schedule B to the Engagement Letter (Budget and Timeline) specifically identified a \$20,000 budget item for Professor Flynn. (Evid. Hrg. Exhibit 6, at 00026.)	Objection. Misstates and mischaracterizes the evidence. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend

1		to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.	
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9	74	Defendants represented to Front Sight that Front Sight could not be an owner of the regional center because it would be a “conflict.” (September 20, 2019 Evid. Hrg. Tr., p. 101, l. 12 – p. 102, l. 3.)	Objection: Misstates Testimony
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12	75	Defendant Dziubla admitted that Front Sight paid \$20,000 specifically for an economic study, that a professor named Sean Flynn received a 20% interest in the regional center for producing the report, and that Dziubla spent the \$20,000 on “operating expenses” instead of paying it to Sean Flynn. Defendant Dziubla did not disclose to Front Sight that he kept the money for “operating expenses,” – the documentation for which Dziubla “tossed.” (June 3, 2019 Evid. Hrg. Tr., p. 35, l. 11 – p. 38, l. 17; p. 48, l. 12 – p. 49, l. 20.)	Duplicate, See #47
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20	76	g. Defendants’ lied about the expenses being minimal and “reimbursable” such that they would keep accurate records to justify the expenses:	DISPUTED
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23	77	Defendant Dziubla destroyed the financial documents of Defendant EB5IA; according to him that was pursuant to a “document retention policy” that he claims allowed him to destroy the records. (June 3, 2019 Evid. Hrg. Tr., p. 48, l. 12 – p. 49, l. 20.)	Duplicate, See #44
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26	78	Defendant Fleming testified that no such policy existed to destroy Defendant EB5IA’s documents, and rather, testified	Duplicate, See #45
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1		that they kept excellent records. (November 20, 2019 Evid. Hrg. Tr., p. 36, l. 4 – p. 37, l. 23.)	
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3	79	After the Court ordered an accounting of EB5IA’s use of Front Sight’s funds, Defendants EB5IA and Dziubla provided some documents. The deficient records Defendants Dziubla and EB5IA provided showed Dziubla and Fleming paid themselves out of Front Sight’s funds, contrary to their representations. (See Exhibit 6, at p. 6, ¶ 8.)	Duplicate, See #46
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9	80	Defendant Dziubla admitted that Front Sight paid \$20,000 specifically for an economic study, that a professor named Sean Flynn received a 20% interest in the regional center for producing the report, and that Dziubla spent the \$20,000 on “operating expenses” instead of paying it to Sean Flynn. Defendant Dziubla did not disclose to Front Sight that he kept the money for “operating expenses.” (June 3, 2019 Evid. Hrg. Tr., p. 35, l. 11 – p. 38, l. 17.)	Duplicate, See #47
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16	81	Front Sight’s expert witness, Catherine Holmes, Esq., contradicts this by stating that the \$300,000 Defendants represented to Front Sight is “a substantially inflated estimate of direct-out-of-pocket costs, and that it is not customary for an amount this large to be paid up front. I believe that this estimate was a misrepresentation of the true costs of an EB-5 offering intended to mislead the Plaintiff into paying substantially more upfront than it would pay to a legitimate EB-5 funding provider. ” (See Exhibit 4, at p. 1, ¶ 2 (emphasis added).)	Duplicate, See #50
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25	82	Defendant Fleming had no experience with EB-5 lending prior to joining EB5IA. (June 3, 2019 Evid. Hrg. Tr., p. 26; November 20, 2019 Evid. Hrg. Tr., p. 9, ls. 3-21.)	Duplicate, See #4
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28	83	Defendant Dziubla testified that “This was	Duplicate, See #5

1		our first direct project [in EB-5 lending].” (June 3, 2019 Evid. Hrg. Tr., p. 38.) Dziubla confirmed a second time that it was his and Fleming’s first project.	
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4	84	Defendant Dziubla clarified his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (June 3, 2019 Evid. Hrg. Tr., p. 39.)	Duplicate, See #6
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8	85	Defendant Fleming has never brought an EB-5 project to successful completion. (November 20, 2019 Evid. Hrg. Tr., p. 83, ls. 14-17.)	Duplicate, See #7
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11	86	Defendants have never sourced an investor from Asia. (November 20, 2019 Evid. Hrg. Tr., p. 95, l. 15.)	Duplicate, See #10
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13	87	Despite the claims of handling \$10 billion worth of transactions and 8 transactions in the year before the April 7, 2012 e-mail, Dziubla and Fleming failed to inform Front Sight that NONE of those transactions involved EB-5 financing. Defendant Dziubla testified that “This was our first direct project [in EB-5 lending].” (June 3, 2019 Evid. Hrg. Tr., p. 38.)	Duplicate, See #12
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18	88	Defendants do NOT have an expansive network of relationships. To the contrary, Defendants were working to retain an agent for Ukraine and Russia in September 2015. (Evid. Hrg. Exhibit 44, at Contracts (2)00062-63.) Defendants did not retain Mayflower Business Consulting, Co. Ltd. until October 2015. (Evid. Hrg. Exhibit 44, at Contracts (2)00052.) Around that same time, Defendants retained Williams Global Law, PLLC to assist with creating a network in China and Brazil. (June 3, 2019 Evid. Hrg. Tr., p. 112, l. 21 – p. 113, l. 15; p. 118, l. 16 – p. 120, l. 5; Evid. Hrg. Exhibit 46, at (EB5ICA)00169- 00177.) All of that occurred after USCIS approval in June 2015. Likewise, in January 2016,	Duplicate, See #13
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1 2 3 4 5	Defendants retained Ethan Devine as an independent contractor to conduct business development for Defendants’ projects, attempt to cultivate a network of agents to obtain investors for Plaintiff’s project, and assist in various aspects of Defendants’ other projects. (Evid. Hrg. Exhibit 44, at Contracts (2)00046.)	
6 7 8	89 The parties agree Defendants only loaned \$6.3 million – Dziubla and Fleming’s “old Chinese friend” failed to provide the promised “200-500 investors very quickly.”	Objection: Assumes facts not in evidence, lacks foundation, and Mr. Alldrich’s personal opinion with no citation to the record is not evidence.
9 10 11 12 13 14 15 16 17 18 19 20 21 22	90 On November 18, 2013, Dziubla sent a an email, and copied Fleming, saying, “ we understand that Front Sight wants the \$75m EB5 raise done on an ‘all or none’ basis, i.e. all \$75m gets raised . . . before any disbursement to the Developer [Front Sight]. ” (See e-mail correspondence dated November 18, 2013, attached hereto as Exhibit 10 (emphasis added).)	Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “ Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement. ” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
23 24 25 26 27 28	91 On May 13, 2014, EB5IA sent a letter to then-Senator Dean Heller’s office, thanking his Legislative Director “for making time to discuss the \$75,000,000 expansion project for the Front Sight Firearms Training Institute in Pahrump, NV.” (See e-mail correspondence dated May 13, 2014, attached hereto as Exhibit 11, at FS 02658 (emphasis added).)	Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “ Nothing contained in this Agreement is to be construed as a commitment by

1 2 3 4 5 6 7 8		EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.
9 10 11 12 13 14 15 16 17 18 19 20 21 22	92 On June 26, 2014, Front Sight’s Chief Operating Officer, Mike Meacher, e-mailed Defendant Dziubla and asked: “Can you give me a summary of your selling success on the San Diego EB-5 fundraising? How many investors have put up their \$500,000 and how many have been accepted by USCIS? I am trying to get an idea of how long it is taking for you to raise the capital for this project... ” (Evid. Hrg. Exhibit 9, at 0036- 37 (emphasis added).) In response, Dziubla (copying Fleming) responded that they had a very big advantage of pre-approval by USCIS, representing that: “We anticipate that once we start the roadshows...we should have the first tranche of \$25m into escrow and ready for disbursement to the project... within 4-5 months. ” (Evid. Hrg. Exhibit 9, at 0037 (emphasis added).)	Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.
23 24 25 26 27 28	93 Defendants’ response letter to USCIS, dated May 18, 2015, explained that “\$75 million will be funded with EB5 investor funds...” (See e-mail correspondence dated May 19, 2015, attached hereto as Exhibit 12, at FS 03616 (emphasis added).)	Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by

1 2 3 4 5 6 7 8		<p>EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
9 10 11 12 13 14 15 16 17 18 19 20 21 22	<p>94 On August 22, 2014, Dziubla sent an EB5IC email describing the loan as “the \$75 million they [Sinowel] will be raising from their clients.” (See e-mail correspondence dated August 28, 2014, attached hereto as Exhibit 13, at FS 02811-02813 (emphasis added).)</p>	<p>Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “<i>Nothing contained in this Agreement is to be construed as a commitment</i> by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
23 24 25 26 27 28	<p>95 Defendants’ letter dated January 23, 2015 to USCIS described the loan as being for \$75 million. (See correspondence dated January 23, 2015, attached hereto as Exhibit 14, at FS 03006-03007 (emphasis added).)</p>	<p>Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “<i>Nothing contained in this Agreement is to be construed as a commitment</i> by</p>

1 2 3 4 5 6 7 8		<p>EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>" (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
9 10 11 12 13 14 15 16 17 18 19 20 21 22	<p>96 On July 29, 2015, Dziubla sent an email delivering a memo dated July 29, 2015, to Front Sight describing the loan as being "the \$75m." (See e-mail correspondence dated July 29, 2015, attached hereto as Exhibit 15, at FS 03702 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein." <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that <i>"Nothing contained in this Agreement is to be construed as a commitment</i> by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>" (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
23 24 25 26 27 28	<p>97 On June 30, 2015, Fleming, on behalf of Defendants, described the loan to Front Sight, stating in a letter to then-Senator Dean Heller that "we will be raising \$75,000,000 in foreign investor funds." (See correspondence dated June 30, 2015, attached hereto as Exhibit 16 (emphasis added).)</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein." <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that <i>"Nothing contained in this Agreement is to be construed as a commitment</i> by</p>

1 2 3 4 5 6 7 8		<p>EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
9 10 11 12 13 14 15 16 17 18 19 20 21 22	<p>98 On August 4, 2015, Dziubla sent an EB5IC email referring to “the \$75m that we are going to raise for Front Sight....” (Evid. Hrg. Exhibit 11, at 0047; Exhibit 18, at 0072 (emphasis added).)</p>	<p>Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
23 24 25 26 27 28	<p>99 On December 16, 2015, Defendants represented that they “may still be able to achieve the minimum raise of \$25m by January 31....” (Evid. Hrg. Exhibit 13, at 0052.)</p>	<p>Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by</p>

		<p>EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>" (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
<p>100</p>	<p>On January 4, 2016, Mike Meacher had clearly been led to believe a first disbursement was imminent. He asked Dziubla: Please give me an update on the status of investors so we can plan on a timeline for the initial distribution." (Evid. Hrg. Exhibit 14, at 0056.) Dziubla stated: "The minimum raise for the Front Sight project is \$25m. At \$500k per investor, that requires 50 investors only. Once we have the \$25m in escrow and the loan documents have been signed (presumably within the next few days), we will disburse 75% of that to you." (Evid. Hrg. Exhibit 14, at 0056 (emphasis added).)</p>	<p>Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein." <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that <i>"Nothing contained in this Agreement is to be construed as a commitment</i> by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>" (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
<p>101</p>	<p>In an e-mail string between January 27 and 31, 2016, Dziubla represented that Ethan Devine, who was starting with Defendants on February 1, 2016, had raised \$30 million in EB-5 financing in just four months. (Evid. Hrg. Exhibit 15, at 0060 (emphasis added).)</p>	<p>Objection: Misstates testimony; Best Evidence</p>
<p>102</p>	<p>On May 5, 2016, Defendant Fleming also used his EB5IC email to adopt the notion</p>	<p>Objection. The parole evidence rule forbids the reception of evidence which</p>

1 2 3 4 5 6 7 8 9 10 11 12	that the EB-5 fundraise would be for \$75 million by delivering marketing materials (as a PDF attachment to the email to Front Sight) stating that “ Las Vegas Development Fund LLC (‘Fund’) will raise \$75 million USD in EB-5 Funding ” and “Fund will lend the \$75 million (‘Loan’) to the Developer for a 5-year term (subject to a two year extension).” (See e-mail correspondence dated May 5, 2016, attached hereto as Exhibit 17, at FS 04587, 04589, 04611 (emphasis added).)	would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that “ “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i> ” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
13 14 15 16 17 18 19 20 21	103 On May 12, 2016, Defendants Dziubla and Fleming sent an e-mail to Front Sight setting forth three “choices” it claimed Front Sight must choose from: (1) “[c]all it a day, shake hands, and part ways as friends,” meaning that Defendants would keep the hundreds of thousands of dollars Front Sight had already paid Defendants with nothing of substance in return, (2) restructure the capital stack, including restructuring the capital stack, and (3) selling the regional center – which Front Sight had already paid \$277,000 for – to Front Sight. (Evid. Hrg. Exhibit 53.)	Objection. Privileged Settlement Communications, assumes facts not in evidence, and lacks foundation. Moreover, Mr. Alldrich’s personal opinion with no citation to the record is not evidence.
22 23 24	104 Defendant Fleming had no experience with EB-5 lending prior to joining EB5IA. (June 3, 2019 Evid. Hrg. Tr., p. 26; November 20, 2019 Evid. Hrg. Tr., p. 9, ls. 3-21.)	Duplicate, See #4
25 26 27	105 Defendant Dziubla testified that “This was our first direct project [in EB-5 lending].” (June 3, 2019 Evid. Hrg. Tr., p. 38.) Dziubla confirmed a second time that it was his and Fleming’s first project.	Duplicate, See #5

1	106	Defendant Dziubla clarified his testimony a little, stating that besides the Front Sight Project and the single project at Baker & McKenzie in 1990, Dziubla had no experience in EB-5 lending. (June 3, 2019 Evid. Hrg. Tr., p. 39.)	Duplicate, See #6
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5	107	It is undisputed that Defendants only provided Front Sight \$6.3 million.	Duplicate, See #40
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7	108	Defendants claim to have raised an additional \$1.5 million to \$2 million but concealed from Front Sight that they had received the funds. Then, when Front Sight learned of the funds, Defendants refused to provide those funds to Front Sight despite the absence of any breaches at the time the money came in. (June 3, 2019 Evid. Hrg. Tr., p. 156, l. 2 – p. 158, l. 13.)	Duplicate, See #29
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12	109	Despite the claims of handling \$10 billion worth of transactions and 8 transactions in the year before the April 7, 2012 e-mail, Dziubla and Fleming failed to inform Front Sight that NONE of those transactions involved EB-5 financing. Defendant Dziubla testified that “This was our first direct project [in EB-5 lending].” (June 3, 2019 Evid. Hrg. Tr., p. 38.)	Duplicate, See #12
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18	110	Despite their repeated representations of how much they would raise, Dziubla and Fleming had “no idea” how much money they would really be able to raise. (June 3, 2019 Evid. Hrg. Tr., p. 169.)	Duplicate, See #50
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21	111	Defendants still did NOT disclose that they accounted for exactly \$0 of the \$1.2 billion raised through EB-5 in Q1 in 2012 was raised by Defendants. (June 3, 2019 Evid. Hrg. Tr., p. 63, l. 15 – p. 64, l. 9.)	Duplicate, See #47
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25	112	In setting forth these “options” in the May 12, 2016 e-mail and later during a meeting in Oakland, California on May 18, 2016, Defendants did nothing to correct all of the prior misrepresentations about Defendants’ experience and/or abilities. And then	Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb</i>
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<p>1 2 3 4 5 6 7 8 9 10</p>	<p>Defendants promised that if Front Sight agreed to change the capital stack and remove the minimum raise, Defendants would be able to fund the project. (September 20, 2019 Evid. Hrg. Tr., p. 124.)</p>	<p><i>Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>113 Dr. Piazza told Dziubla before Dziubla’s assurances that he could raise the full \$75 million: “Look, I don’t want to get half pregnant here. . . . I don’t want to do this until you have \$25 million to drop into our account so we can move this project forward and that you’re confident that you can do the other 25 [million dollars] and the other 25 [million dollars].’ Because it was a \$75 million deal.”</p>	<p>Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>25 26 27 28</p>	<p>114 Front Sight’s expert witness, Catherine Holmes, Esq., opined, “The Engagement Agreement (Exhibit 5 of the Declaration) contains an estimated timeline showing that \$75 million in EB-5 financing would be raised between 4 months from the earliest</p>	<p>Duplicate, See #37</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13</p>	<p>expected approval of the regional center and 6 months from the latest expected approval of the regional center. Those estimates wildly misrepresented the normal time necessary to raise \$75 million in EB-5 financing. In 2013, only the very largest and most experienced regional centers could raise that much in EB-5 financing, based upon their track record of prior successful EB-5 financings. Most new regional centers either failed to raise any financing at all or would start with very small offerings (\$5 million to \$10 million) and gradually raise larger EB-5 financings as they become known in the EB-5 financing market. Even for well-known regional center operators, it is not unusual for an EB-5 financing, even one sponsored by an experienced EB-5 sponsor, to take a year or more before it gains acceptance in the EB-5 financing market.” (See Exhibit 4, at p. 2, ¶ 5.)</p>	
<p>14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>115 Ms. Holmes’ expert report directly addressed the representations that Defendants could raise \$25 million in a few months, stating, “This assurance that it would take only 4 to 5 months to raise \$25,000,000 in EB-5 financing again substantially overstates the ability of a new regional center to raise EB-5 financing.” (See Exhibit 4, at p. 2, ¶ 6.)</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	<p>116 Regarding the August 11, 2015 promise to raise \$25 million “by Thanksgiving” of 2015, Ms. Holmes stated: “This is yet another indication that Dziubla mislead Plaintiff into believing that it was possible to raise that amount of EB-5 financing within 4 months.” (See Exhibit 4, at p. 3, ¶ 7 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
16 17 18 19 20 21 22 23 24 25	<p>117 Addressing Dziubla’s fabricated excuse for the slow sales, Ms. Holmes explained by the excuse was false: “If Dziubla had any knowledge of the EB-5 markets, he would have known that 2015 was a year of very high market demand, and his statements that the market had slowed in 2015 were deliberately misleading.” (See Exhibit 4, at p. 3, ¶ 8 (emphasis added).)</p>	<p>NRCP Rule 43(c) permits evidence on motions to be presented by affidavit. Local Rule 2.21(a) provides “[f]actual contentions involved in any pretrial or post-trial motion must be initially presented and heard upon affidavits [or] unsworn declarations under penalty of perjury . . .” NV ST 8 DIST CT Rule 2.21(emphasis added). The “expert report” of Catherine DeBono Holmes, which Plaintiff relies heavily upon throughout its Motion, does not have an authenticating affidavit or declaration and the expert report itself is NOT sworn to under penalty of perjury. Such an unsworn document is incompetent evidence and should not be relied upon.</p>
26 27 28	<p>118 Defendant Dziubla destroyed the financial documents of Defendant EB5IA; according to him that was pursuant to a “document retention policy” that he claims allowed</p>	<p>Duplicate, See #44</p>

1		him to destroy the records. (June 3, 2019 Evid. Hrg. Tr., p. 48, l. 12 – p. 49, l. 20.)	
2	119	Defendant Fleming testified that no such policy existed to destroy Defendant EB5IA’s documents, and rather, testified that they kept excellent records. (November 20, 2019 Evid. Hrg. Tr., p. 36, l. 4 – p. 37, l. 23.)	Duplicate, See #45
3	120	After the Court ordered an accounting of EB5IA’s use of Front Sight’s funds, Defendants EB5IA and Dziubla provided some documents. The deficient records Defendants Dziubla and EB5IA provided showed Dziubla and Fleming paid themselves out of Front Sight’s funds, contrary to their representations. (See Exhibit 6, at p. 6, ¶ 8.)	Duplicate, See #46
4	121	Defendant Dziubla admitted that Front Sight paid \$20,000 specifically for an economic study, that a professor named Sean Flynn received a 20% interest in the regional center for producing the report, and that Dziubla spent the \$20,000 on “operating expenses” instead of paying it to Sean Flynn. Defendant Dziubla did not disclose to Front Sight that he kept the money for “operating expenses.” (June 3, 2019 Evid. Hrg. Tr., p. 35, l. 11 – p. 38, l. 17.)	Duplicate, See #47
5	123	Defendants’ representation that “our direct out-of-pocket cost to do an EB-5 raise is typically \$300k (paid upfront), as we need to engage a number of providers immediately as well as conduct an international roadshow,” had no basis, as Defendants Dziubla and Fleming had no experience with EB-5 lending. (See Evid. Hrg. Exhibit 3, at 0007; June 3, 2019 Evid. Hrg. Tr., pp. 26, 38-39; November 20, 2019 Evid. Hrg. Tr., p. 9, ls. 3-21.)	Duplicate, See #49
6	124	Front Sight’s expert witness, Catherine Holmes, Esq., contradicts this by stating that the \$300,000 Defendants represented	Duplicate, See #50

1		to Front Sight is “a substantially inflated estimate of direct-out-of-pocket costs, and that it is not customary for an amount this large to be paid up front. I believe that this estimate was a misrepresentation of the true costs of an EB-5 offering intended to mislead the Plaintiff into paying substantially more upfront than it would pay to a legitimate EB-5 funding provider.” (See Exhibit 4, at p. 1, ¶ 2 (emphasis added).)	
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8	125	The February 14, 2013 Engagement Letter contained language regarding the establishment of a Regional Center. Ms. Holmes’ expert report states, in part, “The establishment of a regional center is a highly unusual provision in an engagement letter to provide EB-5 financing to a third party, and the cost of establishment of the regional center is, in my experience, always paid for by the owner of the regional center, not the party seeking financing. These provisions indicate that EB5IA mislead the Plaintiff into believing that this was a normal part of an EB-5 financing, which it was not. ” (See Exhibit 4, at pp. 1-2, ¶ 3 (emphasis added).)	Duplicate, See #51
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18	126	On Wednesday, May 18, 2016, Defendants Dziubla and Fleming met with Dr. Piazza and Mike Meacher in Oakland. (Evid. Hrg. Exhibit 53; September 20, 2019 Evid. Hrg. Tr., p. 120.) Defendants claimed they were “broke” and demanded Front Sight pay \$8,000 per month or they were done. (September 20, 2019 Evid. Hrg. Tr., p. 110, 120.)	Objection: Irrelevant.
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24	127	June 29, 2014: “once we start the roadshows for the Front Sight project, ...we should have the first tranche of \$25m into escrow and ready for disbursement to the project (at the 75% level, i.e. \$18.75m, as discussed) within 4 – 5 months. ” (Evid. Hrg. Exhibit 9, at FS 0036 (emphasis added).)	Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb</i>
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<p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>128 August 11, 2015: “Front Sight is the ONLY EB5 project we are handling and of course receives our full and diligent attention. Our goal is most assuredly to have the minimum raise of \$25m (50 investors) subscribed by Thanksgiving.” (Evid. Hrg. Exhibit 11, at 0044 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>26</p> <p>27</p> <p>28</p>	<p>129 October 16, 2015: “We certainly are aiming to achieve the \$25 [million] minimum raise by 12/31, but it may go to Jan. 15.” (See e-mail correspondence dated October</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12</p>	<p>16, 2015, attached hereto as Exhibit 18, at FS 08064 (emphasis added).)</p>	<p>would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>130 December 16, 2015: Mr. Meacher inquired: Should we be concerned about the slow sales? In prior communications you indicated your belief that we could generate sufficient investors for the first distribution by end of the year or January.” Dziubla responded: “With regard to the timeline, we may still be able to achieve the minimum raise of \$25m by January 31 and thereupon begin disbursing the construction loan proceeds to you, but a more realistic date might be February 8. Why that date you ask? Because the Christmas holidays and January 1st new year holiday are rather insignificant in China and, importantly, February 8 is the start of the Chinese New Year. Chinese people like to conclude their major business decisions before the start of that 2 – 3 week holiday period, so we expect to see interest in the FS project growing rapidly over the next couple of weeks with interested investors getting their source and path of funds verification completed in January so that they can make the investment by February 8.” (Evid. Hrg. Exhibit 13, at 0052 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15</p>	<p>131 On January 4, 2016, Dziubla stated: “We are pushing our agents hard to have 50 investors into escrow by February 29. Once we have the 50 investors into escrow with the Minimum Raise achieved, we will disburse the initial \$18.75m to you and then continue with the fundraising, which is likely to accelerate since it has a snowball type of effect. As the funds continue to come into escrow, we will continually disburse them to you.” (Evid. Hrg. Exhibit 14, at 0056 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that ““Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>
<p>16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>132 Still in the January 4, 2016 e-mail, Dziubla represented: “Given that the current EB-5 legislation expires on September 30, 2016, at which time the minimum investment amount will most likely increase to \$800k, we highly anticipate that we will have raised the full \$75m by then.” (Evid. Hrg. Exhibit 14, at 0056 (emphasis added).)</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that ““Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. <i>This is not a guarantee that any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i>” (Engagement Letter at 2 (emphasis</p>

1 2		added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	<p>133 On January 26, 2016, Mr. Meacher e-mailed Dziubla requesting an update and stating: “Sales seem very slow for being into the selling effort seriously for 4-5 months.” In an email string between January 27 and 31, 2016, Dziubla represented that Ethan Devine, who was starting with Defendants on February 1, 2016, had raised \$30 million in EB-5 financing in just four months. (Evid. Hrg. Exhibit 15, at 0060-61 (emphasis added).) This left Front Sight believing Defendants might be able to raise the \$25 million minimum raise quickly.</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parole evidence rule and should not be considered by the court.</p>
18 19 20 21 22 23 24 25 26 27 28	<p>134 In setting forth the “options” in the May 12, 2016 e-mail and later during a meeting in Oakland, California on May 18, 2016, Defendants did nothing to correct all of the prior misrepresentations about Defendants’ experience and/or abilities. And then Defendants promised that if Front Sight agreed to change the capital stack and remove the minimum raise, Defendants would be able to fund the project. (September 20, 2019 Evid. Hrg. Tr., p. 124.)</p>	<p>Duplicate, See #137 Objection. Privileged Settlement Communications. Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parole evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that</p>

1 2 3 4 5 6		<i>any such Financing can be procured</i> by EB5IA for the Company on terms acceptable to the Company, <i>or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.</i> ” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.
7 8 9 10	135 Defendants always had a convenient excuse why it was not their fault they could not raise the money. (September 20, 2019 Evid. Hrg. Tr., p. 124-126.)	Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Assumes facts not in evidence, improper legal conclusion, and Mr. Aldrich’s personal opinion with no citation to the record is not evidence..
11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	136 Front Sight’s expert witness, Catherine Holmes, Esq., opined, “The Engagement Agreement (Exhibit 5 of the Declaration) contains an estimated timeline showing that \$75 million in EB-5 financing would be raised between 4 months from the earliest expected approval of the regional center and 6 months from the latest expected approval of the regional center. Those estimates wildly misrepresented the normal time necessary to raise \$75 million in EB-5 financing. In 2013, only the very largest and most experienced regional centers could raise that much in EB-5 financing, based upon their track record of prior successful EB-5 financings. Most new regional centers either failed to raise any financing at all or would start with very small offerings (\$5 million to \$10 million) and gradually raise larger EB-5 financings as they become known in the EB-5 financing market. Even for well-known regional center operators, it is not unusual for an EB-5 financing, even one sponsored by an experienced EB-5 sponsor, to take a year or more before it gains acceptance in the EB-5 financing market.” (See February 21, 2019 Expert Witness Report of Catherine Holmes, Esq., attached hereto as Exhibit 4, at p. 2, ¶ 5 (emphasis	Duplicate, See #37

1		added).)	
2	137	Ms. Holmes' expert report also noted, "EB5IA could have entered into an agreement with one of several regional centers that were already approved to be sponsor projects..., but for unexplained reasons, EB5IA chose not to enter into an agreement with an existing regional center, and instead to file a regional center application that would require it to delay marketing for over a year. " (See Exhibit 4, at p. 2, ¶ 4 (emphasis added).)	Duplicate, See #68
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9	138	Ms. Holmes' expert report directly addressed the representations that Defendants could raise \$25 million in a few months, stating, "This assurance that it would take only 4 to 5 months to raise \$25,000,000 in EB-5 financing again substantially overstates the ability of a new regional center to raise EB-5 financing." (See Exhibit 4, at p. 2, ¶ 6.)	Duplicate, See #119
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15	139	Regarding the August 11, 2015 promise to raise \$25 million "by Thanksgiving" of 2015, Ms. Holmes stated: " This is yet another indication that Dziubla mislead Plaintiff into believing that it was possible to raise that amount of EB-5 financing within 4 months. " (See Exhibit 4, at p. 3, ¶ 7 (emphasis added).)	Duplicate, See #120
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20	140	Addressing Dziubla's fabricated excuse for the slow sales, Ms. Holmes explained by the excuse was false: " If Dziubla had any knowledge of the EB-5 markets, he would have known that 2015 was a year of very high market demand, and his statements that the market had slowed in 2015 were deliberately misleading. " (See Exhibit 4, at p. 3, ¶ 8 (emphasis added).)	Duplicate, See #121
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25	141	Regarding the December 16, 2015 e-mail, Ms. Holmes stated: " This shows that Dziubla was continuing to misrepresent to Plaintiff that there was a possibility that at least \$25,000,000 would be raised	Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract,
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<p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>	<p>142 In an e-mail dated March 1, 2016, Mike Meacher sent an e-mail to Defendants outlining many misrepresentations Defendants had made regarding the status of the fundraising. That list includes 28 different representations about investors who were in the pipeline or prepare to imminently invest. On January 27, 2016, Dziubla stated: “We, like you, are frustrated and annoyed with the slow sales pace. Therefore, we are in the process of signing up four new agents and are interviewing tomorrow a potential new hire for our company to act as a dedicated sales manager.” (Evid. Hrg. Exhibit 16, at 0066-67.)</p>	<p>Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein.” <i>Daly v. Del E. Webb Corp.</i>, 96 Nev. 359, 361 (1980). Here the contract specifically provides that “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement.” (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule and should not be considered by the court.</p>

1	143	On August 6, 2015, Front Sight requested “progress emails every couple of weeks as to brokers signed up in various countries and investors located and closed.” (Evid. Hrg. Exhibit 11, at 0046-47.)	Objection: Irrelevant
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4	144	At no time prior to this litigation did Defendants let Front Sight know the truth about their lack of experience.	Objection: Lacks foundation and Mr. Aldrich’s personal opinions with no citation to the record are not evidence.
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7	145	In an e-mail dated May 12, 2016, Defendants stated that if Front Sight chose “option” number 1, the first thing they must do is “refund the EB5 money that is in escrow.” (Evid. Hrg. Exhibit 53.)	Objection. Privileged Settlement Communications.
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10	146	In setting forth the “options” in the May 12, 2016 e-mail and later during a meeting in Oakland, California on May 18, 2016, Defendants did nothing to correct all of the prior misrepresentations about Defendants’ experience and/or abilities. And then Defendants promised that if Front Sight agreed to change the capital stack and remove the minimum raise, Defendants would be able to fund the project. (September 20, 2019 Evid. Hrg. Tr., p. 124.)	Duplicate, See #138
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17	147	While Plaintiff and the Court assume there are indeed immigrant investors, Defendants have never proven such investors actually exist, including when any given investor actually had placed funds in escrow. Plaintiff has repeatedly requested this information in discovery.	Objection: Lacks Foundation
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22	148	B. FACTS RELATED TO CONVERSION	
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24	149	Front Sight paid Defendants hundreds of thousands of dollars (Dr. Piazza testified Front Sight paid a total of approximately \$522,000) to create the regional center, market the project, and raise the money. (September 20, 2019 Evid. Hrg. Tr., pp. 116, 186.)	Objection: Lacks Foundation and assumes facts not in evidence.
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1	150	Nevertheless, the documentation provided by Defendants EB5IA and Dziubla is not a proper accounting.	Objection: Irrelevant.
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3	151	Nevertheless, it is undisputed that Defendants Dziubla, Fleming, and EB5IA have converted Front Sight's funds.	Objection: Lacks Foundation, the court held EB5IA's accounting was sufficient.
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5	152	Even the printed copies of what Defendants allege are QuickBooks records are suspect, and Defendants have refused to provide the electronic backup for verification.	Objection: Lacks Foundation, the court held EB5IA's accounting was sufficient.
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8	153	C. FACTS RELATED TO CIVIL CONSPIRACY	
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10	154	Defendant Stanwood is still listed as Senior Vice President. (See printout of Defendant's webpage, attached hereto as Exhibit 20.)	Objection: Hearsay
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13	155	D. FACTS RELATED TO BREACH OF CONTRACT	
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15	156	Long before Front Sight's alleged default under the Construction Loan Agreement, Defendants stopped marketing the Front Sight Project	Objection. Misstates and mischaracterizes the document. Best Evidence Rule. Objection. The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein." <i>Daly v. Del E. Webb Corp.</i> , 96 Nev. 359, 361 (1980). Here the contract specifically provides that <i>"Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its affiliates or its agents to lend to or invest in the contemplated Financing. This is not a guarantee that any such Financing can be procured by EB5IA for the Company on terms acceptable to the Company, or a representation or guarantee that EB5IA will be able to perform successfully the Services detailed in this Agreement."</i> (Engagement Letter at 2 (emphasis added)). Accordingly, this proposed evidence violates the parol evidence rule
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1		and should not be considered by the court.
2	157	Between the end of 2017 and when Dziubla dissolved Defendant EB5IA, long before Defendants made their frivolous claims of breach, Defendants Dziubla, Fleming, EB5IA, and LVDF were not marketing the Front Sight project. (June 3, 2019 Evid. Hrg. Tr., p. 32, ls. 11-15). Defendants Dziubla and Stanwood, as representatives of Defendant LVDF, were supposed to be marketing the project.
3		Objection: Lacks foundation and is Irrelevant.
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8	158	LVDF failed to comply with its contractual obligation to give 5-days' notice as to the \$1 million - \$2 million it is currently holding in escrow. The Construction Loan Agreement requires LVDF to "advise Borrower [Front Sight] within five (5) business days every time Lender [LVDF] has received a new EB-5 Investor's funds into the Escrow Account," clearing the way for Front Sight to request an Advance from LVDF. (Evid. Hrg. Exhibit 33, at § 3.1.)
9		Objection: Improper legal conclusion, and lacks foundation.
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15	159	Dziubla testified he held back \$1 million - \$2.0 million (2-4 investors) a month or longer before he even alleged Front Sight was in default. (June 3, 2019 Evid. Hrg. Tr., pp. 156-57).
16		Objection: Misstates testimony.
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18	160	Dziubla claimed he did not provide the money because of lack of information, and because Front Sight had not provided a draw request. Dziubla and LVDF had never required a draw request before. (June 3, 2019 Evid. Hrg. Tr., p. 157).
19		Objection: Misstates testimony.
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22	161	This failure to notify constituted a material breach of LVDF's obligations under the Construction Loan Agreement that resulted in \$1 million to \$2 million less being loaned to Front Sight more than a year before the Completion Date pertaining to the Project as set forth in the Construction Loan Agreement.
23		Objection: Mr. Aldrich's personal opinion without citation to the record is not evidence.
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27	162	Dziubla has admitted his purpose is to take
28		Objection: Irrelevant and argumentative.

1		over Front Sight’s property and project, and then raise the money and complete the project himself – that is, he intends to raise the money he has failed to raise on Front Sight’s behalf and having spent Front Sight’s money purportedly to raise the money he has thus far failed to raise. (June 3, 2019 Evid. Hrg. Tr., p. 148, ls. 5-20.)	
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6	163	Dziubla has not facilitated the filing of the I-829 petitions by the immigrant investors. If Dziubla had truly been trying to help the immigrant investors and/or to protect their money, he would have honestly evaluated the Front Sight project, hired an economist who knew what he was doing, and advised the immigrant investors almost immediately that they should submit their I-829 petitions to the USCIS for approval	Objection. Assumes facts not in evidence and lacks foundation. Moreover, Mr. Alrdrich’s personal opinion with no citation to the record is not evidence.
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12	164	Front Sight had already created plenty of jobs when the first money came in between October 2016 and June 30, 2017.	Objection. Assumes facts not in evidence and lacks foundation. Moreover, Mr. Alrdrich’s personal opinion with no citation to the record is not evidence.
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15	165	Each of those investors could have submitted their I-829 petitions long ago, had Dziubla so advised them. They failed to do so in order to allow Defendant LVDF – run by Dziubla – to collect \$36,000 per month in interest payments and to fund this litigation using Front Sight’s own money. (June 3, 2019 Evid. Hrg. Tr., pp. 160-161.) And all of this while Dziubla and Defendant EB5IA were accepting marketing payments from Front Sight even though they had stopped marketing the project.	Objection. Assumes facts not in evidence and lacks foundation. Moreover, Mr. Alrdrich’s personal opinion with no citation to the record is not evidence.
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23	166	G. FACTS RELATED TO ALTER EGO CLAIMS	
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25	167	The Entity Defendants are influenced and governed by Defendants Dziubla, Fleming, and Stanwood.	This fact is not supported by any evidence or citation to the record.
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27	168	Dziubla and Fleming were the only officers before Fleming left at the end of 2017	This fact is not supported by any evidence or citation to the record.
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1	169	Dziubla described the Entity Defendants as a “two man operation” (although this is contrary to many of his fraudulent representations, which left the impression Dziubla and company had many resources). (June 3, 2019 Evid. Hrg. Tr., p. 30.)	Objection: Irrelevant, assumes facts not in evidence and lacks foundation.
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5	170	There is a unity of interest and ownership that is inseparable.	This fact is not supported by any evidence or citation to the record
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7	171	Again, all three individual Defendants make up the only officers the Entity Defendants have.	This fact is not supported by any evidence or citation to the record
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9	172	The three individual Defendants are the only owners of the Entity Defendants.	This fact is not supported by any evidence or citation to the record
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11	173	While the three Entity Defendants allegedly had distinct roles in moving Front Sight’s project forward, Defendants used them interchangeably.	This fact is not supported by any evidence or citation to the record
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13	174	Many of the e-mails came from an EB5IC e-mail address	This fact is not supported by any evidence or citation to the record
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15	175	Defendants Dziubla and Fleming paid themselves money out of Defendant EB5IA and LVDF at a minimum, based on the scant accounting provided by Defendants.	Objection: Assumes facts not in evidence and lacks foundation. This fact is not supported by any evidence or citation to the record.
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18	176	As set forth in the Declaration of Ignatius Piazza submitted as Exhibit 1 to Plaintiff’s Renewed Motion for Appointment of Receiver and for Accounting back on November 13, 2018, Defendants used the bank accounts of EB5IA and LVDF at least somewhat interchangeably.	Objection: Assumes facts not in evidence and lacks foundation. Moreover, this is a vast mischaracterization that has since been rebuked. Further this fact is not supported by any evidence or citation to the record.
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22	177	And Defendants Dziubla and Fleming transferred money between the entities as well. Dziubla claims he and Fleming transferred \$44,300 from EB5IC to EB5IA – although Mr. Winters explained that they did so in order to pay themselves over \$78,000. (See Exhibit 6, at p. 6.)	Objection: Assumes facts not in evidence and lacks foundation. Moreover, this is a vast mischaracterization that has since been rebuked. Further this fact is not supported by any evidence or citation to the record.
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26			See objection above re: Mr. Winters “expert report”
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178	Defendants extracted hundreds of thousands of dollars from Front Sight under false pretenses.	Objection: Assumes facts not in evidence and lacks foundation.
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DATED: February 3, 2020

GREER & ASSOCIATES, APC

By: /s/ C. Keith Greer
C. KEITH GREER, ESQ.
Attorneys for Defendants

CERTIFICATE OF SERVICE and/or MAILING

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

DEFENDANT AND COUNTERCLAIMANT LVD FUND'S OBJECTIONS TO PLAINTIFF AND COUNTERDEFENDANT'S STATEMENT OF UNDISPUTED FACTS

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

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

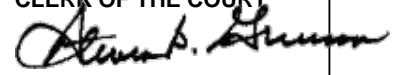
ELECTRONIC SERVICE: Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).

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

Dated: February 3, 2020

/s/ Kathryn Holbert

An Employee of FARMER CASE & FEDOR



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

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

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

Defendants.

AND RELATED COUNTERCLAIMS

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

**DEFENDANT AND
COUNTERCLAIMANT LVD FUND'S
OPPOSITION TO
COUNTERDEFENDANT JENNIFER
PIAZZA'S MOTION FOR SUMMARY
JUDGMENT**

Date: February 19, 2020
Time: 9:30 a.m.

LVD FUND OPPOSITION TO JENNIFER PIAZZA'S MOTION FOR SUMMARY JUDGMENT

1 **I. INTRODUCTION**

2 Counterclaimant Las Vegas Development Fund, LLC (“LVD Fund”) submits this
3 Memorandum of Points and authorities and the accompanying declarations in opposition to the
4 Motion for Summary Judgment filed by Counter-Defendant Jennifer Piazza (“Piazza”),
5 attempting to evade responsibility for her part in diverting tens of millions of dollars from Front
6 Sight into the Dynasty Trusts controlled by her and her husband, Counter-Defendant Ignatius
7 Piazza, in breach of the Construction Loan Agreement (“CLA”) between LVD Fund and Front
8 Sight Management LLC (“Front Sight”).

9 Piazza’s Motion for Summary Judgment seizes upon a single finding of fact from the
10 “Findings of Fact, Conclusions of Law, and Order Denying Defendant Las Vegas Development
11 Fund LLC's Motion to Dissolve Temporary Restraining Order and to Appoint a Receiver”
12 (“1/23/20 TRO Order”). That finding, which is repeated and asserted as allegedly eviscerating
13 every cause of action against Jennifer Piazza, is that **Front Sight “supplied exhibits to establish
14 project cost and expenditures...exceed the loan amounts advanced by LV Development...”**
15 However, because findings in support of a temporary restraining order are preliminary and have
16 no binding effect on subsequent proceedings, this single preliminary finding cannot provide any
17 support for Piazza’s summary judgment motion. Moreover, since both sides submitted evidence
18 on this in the TRO proceedings, the TRO proceedings establish that this is a controverted issue.

19 Piazza’s argument also mischaracterizes and severely overstates the significance of the
20 single factual finding upon which Piazza bases her entire motion. Conflating these two separate
21 and distinct time frames, i.e., pre-Construction Loan funding and post- Construction Loan
22 funding, **simply does not demonstrate that the Construction Loan proceeds were applied to
23 appropriate post-funding project expenditures as required by the CLA, or that Front Sight
24 has met its obligation under the CLA to spend an amount equal to the Loan Proceeds on
25 direct project costs that create jobs.¹**

26 _____
27 ¹ Pursuant to Section 5.3 of the CLA, Front Sight is required to: [P]rovide the documentation and supporting
28 accounting records and contract documents necessary, in Lender’s discretion, to demonstrate that between the
Closing Date and the date of delivery of documentation not less than the total amount of the Advances has been
spent directly or indirectly on the Project substantially in a form acceptable to Lender for compliance with the EB-5
Program. (See the 1/23/20 TRO Order at page 4, attached as Exhibit 1 to Jennifer Piazza’s MSJ.

1 In fact, based on Front Sight’s itemization of alleged Project expenditures, it has barely
2 spent \$4 million of the \$6.375 million dollars in Loan Proceeds on actual post-CLA Project
3 expenditures. Thus, there appears to be more than \$2 million in Construction Loan proceeds that
4 were diverted to the Piazza’s Dynasty Trusts.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
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13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 This evidence is sufficient to defeat Jennifer Piazza’s Motion for Summary Judgment.

28 ///

1 **II. STATEMENT OF FACTS AND ISSUES OF LAW**

2 **A. Jennifer Piazza Is the Trustee and Beneficiary of the Dynasty Trusts**

3 Her Motion dismisses the fact that Jennifer Piazza is the trustee and/or beneficiary of the
4 Dynasty Trusts as irrelevant. Notably, however, the Motion does not dispute that this is true.
5 The Dynasty Trusts are traditional family trusts for the benefit of the Piazza family, including
6 Jennifer.

7 “Under general principles of trust law, trust beneficiaries hold “the equitable estate or
8 beneficial interest in” property held in trust and are “regarded as the real owner[s] of [that]
9 property.” (*Title Ins. & Trust Co. v. Duffill* (1923) 191 Cal. 629, 647, 218 P. 14 (*Duffill* .).) The
10 trustee is “merely the depository of the legal title” to the property (*ibid.*); “ ‘the legal estate’ ” the
11 trustee holds “ ‘is ... no more than the shadow ... following the equitable estate....’ ” *Steinhart v.*
12 *Cty. of Los Angeles*, 47 Cal. 4th 1298, 1319, 223 P.3d 57, 72 (2010). Thus, as beneficiary of the
13 family trust Jennifer Piazza is “regarded as the real owner.”

14 **B. The Holecek Loan is not a “Bridge Loan.”**

15 Piazza appears to argue that paying down the “Holecek Loan” (Greer Decl. Ex 1) both
16 prior to and after the October 6, 2016 closing date for the CLA qualifies as construction expenses
17 to be considered when determining the number of jobs created when LVD Fund reports to the
18 USCIS. This is simply wrong. Pursuant to the USCIS Policy Manual:

19 “1. Bridge Financing: A developer or principal of a new commercial enterprise, either
20 directly or through a separate job-creating entity, may use interim, temporary, or bridge
21 financing, in the form of either debt or equity, prior to receipt of immigrant investor
22 capital. *If the project starts based on the interim or bridge financing prior to receiving
23 immigrant investor capital and subsequently replaces that financing with immigrant
24 investor capital, the new commercial enterprise may still receive credit for the job
25 creation under the regulations.*

24 Generally, the replacement of temporary or bridge financing with immigrant
25 investor capital should have been contemplated prior to acquiring the original temporary
26 financing. *However, even if the immigrant investor financing was not contemplated prior
27 to acquiring the temporary financing, as long as the financing to be replaced was
28 contemplated as short-term temporary financing that would be subsequently replaced by
more permanent long-term financing, the infusion of immigrant investor financing could
still result in the creation of, and credit for, new jobs.*

For example, if traditional financing originally contemplated to replace the
temporary financing is no longer available to the commercial enterprise, a developer is
not precluded from using immigrant investor capital as an alternative source. Immigrant

1 investor capital may replace temporary financing even if this arrangement was not
2 contemplated prior to obtaining the bridge or temporary financing.” (Emphasis added).

3 In other words, in order to qualify as expenditures creating new jobs, the expenditures must be
4 either directly from the EB-5 loan proceeds, or to repay a temporary bridge loan that covered
5 such expenses until the EB-5 loan becomes available.

6 Here, the “Holecek Loan,” reflected in the Deed of Trust recorded on February 17, 2006
7 (i.e., more than a decade before the CLA in this matter was executed), was used to finance the
8 original construction of the Front Sight Firearms Training Institute. (See Greer Decl. Ex. 1 and
9 Ex. 2). [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] (See, “Holecek note paydown prior to the closing date of the Construction Loan
15 Agreement \$6,004,000.00” (VNV Trusts MSJ Ex. 1; 1/23/20 TRO Order, p. 5, Finding of Fact
16 #5).) **Additionally, Front Sight admits that it used an additional \$2,054,000 of Construction**
17 **Loan proceeds to paydown the Holecek note after funding under the Construction Loan**
18 **Agreement.** (Id., p. 5, Finding of Fact # 5 [Holecek post CLA paydown \$1,422,000] and p. 6,
19 Finding of Fact #7 [Holecek post CLA paydown \$632,000]). These were misuses of the loan
20 proceeds to pay general operating expenses of Front Sight as opposed to Project Costs, and
21 personally benefitted Jennifer Piazza by reducing the amount of her personal guarantee.

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24 _____
25 ² The “Resort Project” is the construction of the Front Sight Resort & Vacation Club and an
26 expansion of the facilities and infrastructure of the Front Sight Firearms Training Institute
27 (“Training Facility”). The Project as defined - will include 102 timeshare residential units, up to
28 150 luxury timeshare RV pads, an 85,000 square foot restaurant, retail, classroom and offices
building (to be known as the Patriot Pavilion) and related infrastructure and amenities. The
Resort Project is **NOT** the construction of the original grounds of the Training Facility.

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C. The Project Timeline and Expenditures

Although the motion conflates the two time periods, there are two distinct time frames for the Project: (a) the time prior to funding of the Construction Loan; and (b) the time after funding of the Construction Loan; i.e., pre- and post- October 6, 2016.

1. Pre – Construction Loan Timeline and Expenditures

Front Sight used the Construction Loan proceeds to pay down debts incurred years before it ever even considered an EB-5 capital raise, and therefore those payments did not produce any jobs that could count toward Front Sight’s obligation under the CLA. Specifically, Front Sight used the Construction Loan proceeds to pay down the 2006 Holecek Loan in the amount of \$2,054,000 and paid off the Class action lien in the amount of \$551,871.50. These two items alone aggregate to \$ 2,605,871.50 which are not properly chargeable as “Project Expenses.” Because neither of these liens related to construction on the Resort Project, Front Sight is obligated per terms of the CLA to spend at least this same amount of money generated from other sources, such as income from regular business operations, on actual Project Expenses.

2. The Construction Loan Agreement and Post- Funding Expenditures

The evidence is that Front Sight’s true construction expenses on the Resort Project after the Construction Loan closing date, as identified in the schedules incorporated in Findings of Fact #5 and #7 of the 1/23/20 TRO Order, are only \$3,111,412.95.³ This amount is below the amount of the \$6.375 million Construction Loan funding.

D. Front Sight “Loan To Shareholders” Increased By Slightly Over \$6 Million Shortly After The CLA Funded

[REDACTED]

³ Adding up the line items in the “Expense Category” tables in Findings #5 and #7 in the 1/23/20 TRO Order that relate to construction costs after the CLA closing, and related project advisory fees, shows that only \$3,111,412.95 has actually been spent on the Resort Project since the CLA closed, i.e., much less than the \$6,375 LVD Fund lent to Front Sight.

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E. Transfers to Dynasty Trust the Piazzas

[REDACTED]

[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

F. The 2016 and 2017 Front Sight Schedule L Balance Sheet Shows Front Sight Was Insolvent When It Made the Distributions to the Dynasty Trusts

[REDACTED]

⁴ Greer Decl. Ex. 3, pg. 13181: Front Sight 2016 Form 1120S: Schedule K, ln7).
⁵ Greer Decl. Ex. 3, pg. 13181: Front Sight 2016 Form 1120S: Schedule K, ln7).
⁶ Greer Decl. Ex. 3, pgs. 13243-44: Front Sight 2017 Form K-1, sec. 16(D)).
⁷ Greer Decl. Ex. 3, pgs. 13300-01: Front Sight 2018 Form K-1, sec. 16(D)).

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III. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there are no genuine issues of material fact in dispute. NRCP 56. To obtain summary judgment, the moving party has the burden of showing the absence of genuine issues of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). In deciding the propriety of a summary judgment **all evidence favorable to the nonmoving party will be accepted as true.** See *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 103, 378 P.2d 979, 984 (1963). The purpose of summary judgment is **not to cut litigants off** from their right of trial and therefore, should only be granted where the “moving party is entitled to judgment as a matter of law and **where it is quite clear what the truth is[.]**” *Sartor v. Arkansas Gas Corp.*, 321 U.S. 620, 64 S.Ct. 724, 88 L.Ed. 967 (emphasis added).

To defeat a summary judgment motion, the nonmoving party need merely come forward with evidence sufficient to establish the existence of any disputed element essential to that party's case, and for which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 102 S.Ct. 2548 (1986).

⁸ Greer Decl. Ex. 3, pg. A-013181: Front Sight 2016 Form 1120S, ln. 27.
⁹ Greer Decl. Ex. 3, pg. A-13215: Front Sight 2016, Schedule L, Total Retained Earnings.
¹⁰ Greer Decl. Ex. 3, pg. A-013188: Front Sight 2016 Schedule M-3, ln. 12.
¹¹ Greer Decl. Ex. 3, pg. A-013238: Front Sight 2017 Form 1120S, ln. 27.
¹² Greer Decl. Ex. 3, pg. A-13272: Front Sight 2017, Schedule L, Total Retained Earnings.
¹³ Greer Decl. Ex. 3, pg. A-013245: Front Sight 2018 Schedule M-3, ln. 12.
¹⁴ Greer Decl. Ex. 3, pg. A-013295: Front Sight 2018 Form 1120S, ln. 27.
¹⁵ Greer Decl. Ex. 3, pg. A-13215: Front Sight 2018, Schedule L, Total Retained Earnings.
¹⁶ Greer Decl. Ex. 3, pg. A-013302: Front Sight 2018 Schedule M-3, ln. 12.

1 **IV. ARGUMENT**

2 **A. The Findings Of Fact From A Preliminary Hearing Have No Preclusive Effect and**
3 **Piazza’s Reliance On Them Is Misplaced**

4 Jennifer Piazza’s Motion for Summary Judgment relies exclusively on Findings of Fact from
5 the Preliminary Order denying LVD Fund’s Motion for Appointment of a Receiver. This
6 reliance is misplaced. It is well established that rulings and findings of fact on preliminary
7 matters are just that – preliminary – and have no impact on subsequent proceedings.

8 “[D]ecisions on preliminary injunctions are just that—preliminary . . .” *S. Oregon Barter Fair v.*
9 *Jackson Cty., Oregon*, 372 F.3d 1128, 1136 (9th Cir. 2004). “The findings entered . . . in denying
10 plaintiff’s motion for a preliminary injunction are not binding on this Court in conducting a trial
11 [on] the merits.” *Nat’l Retailers Corp. of Arizona v. Valley Nat. Bank*, 411 F. Supp. 308, 312 (D.
12 *Ariz.* 1976), *aff’d in part, appeal dismissed in part sub nom. Nat’l Retailers Corp. of Arizona v.*
13 *Valley Nat. Bank of Arizona*, 604 F.2d 32 (9th Cir. 1979); *Chinatown Neighborhood Ass’n v.*
14 *Harris*, 33 F. Supp. 3d 1085, 1094 (N.D. Cal. 2014), *aff’d*, 794 F.3d 1136 (9th Cir. 2015)
15 (“[D]ecisions on preliminary injunctions are not binding at trial on the merits. . .”).

16 “The purpose of a preliminary injunction is merely to preserve the
17 relative positions of the parties until a trial on the merits can be
18 held. Given this limited purpose, and given the haste that is often
19 necessary if those positions are to be preserved, a preliminary
20 injunction is customarily granted on the basis of procedures that
21 are less formal and evidence that is less complete than in a trial on
22 the merits. A party thus is not required to prove his case in full at a
23 preliminary-injunction hearing. *Progress Development Corp. v.*
Mitchell, 286 F.2d 222 (C.A.7 1961), and the findings of fact and
24 conclusions of law made by a court granting a preliminary
25 injunction are not binding at trial on the merits . . .”

26 *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 1834, 68 L. Ed. 2d 175 (1981)

27 “These rules are partly pragmatic, *see Camenisch*, 451 U.S. at 395 (“a preliminary
28 injunction is customarily granted on the basis of procedures that are less formal and evidence
that is less complete than in a trial on the merits”), and partly rooted in the fundamental principle
that courts should only decide actual issues of actual consequence to the parties, not provide

1 advisory opinions on abstract questions of law or policy.” *All. for Am.'s Future v. State ex rel.*
2 *Miller*, 128 Nev. 878, 381 P.3d 588 (2012).

3 Applying these principles to the present Motion for Summary Judgment, the Findings of
4 Fact from the prior preliminary hearing are just that – preliminary – and cannot support summary
5 judgment.

6 **B. There Is Substantial Evidence That The Transfers to the Dynasty Trusts Were**
7 **In Violation of The Uniform Fraudulent Transfer Act**

8 In addition to the express terms of Section 5.18 of the CLA,¹⁷ which forbids the Piazzas
9 from diverting funds from Front Sight in a manner that materially affects Front Sight’s solvency
10 and ability to complete the Resort Project, the Uniform Fraudulent Transfer Act exists to protect
11 creditors such as LVD Fund. “The UFTA is designed to prevent a debtor from defrauding
12 creditors by placing the subject property beyond the creditors' reach.” *Herup v. First Bos. Fin.,*
13 *LLC*, 123 Nev. 228, 232 (2007). “Three types of transfers may be set aside under the UFTA: (1)
14 actual fraudulent transfers; (2) constructive fraudulent transfers; and (3) certain transfers by
15 insolvent debtors.” *Herup v. First Bos. Fin., LLC*, 123 Nev. 228, 233 (2007).

16 “A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's
17 assets at a fair valuation.” Nev. Rev. Stat. Ann. § 112.160 (Uniform Fraudulent Transfer Act)).
18 As set forth *infra*, Front Sight’s transfer of funds to Trust Defendants appears to be a transfer to
19 an insider in violation of the Nevada Uniform Fraudulent Transfer Act because Front Sight was
20 insolvent at the time the transfer was made and there was no fair consideration received. Nev.
21 Rev. Stat. Ann. § 112.180 (“The transfer or obligation was to an insider”). “A transfer made by a
22 debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the
23 transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and
24 the insider had reasonable cause to believe that the debtor was insolvent.” Nev. Rev. Stat. Ann.
25 § 112.190. [REDACTED]

26 [REDACTED]

27 _____

28 ¹⁷ Section 5.18 of the CLA provides that: “Borrower shall not . . . make any distribution of money or property to a Related Party . . . if any such payment . . . might adversely affect Borrower’s ability to repay the loan . . .” (Greer Decl. Ex. 6).

1 [REDACTED]
2 [REDACTED] *In re Flutie New York Corp.*, 310 B.R. 31, 52 (Bankr. S.D.N.Y. 2004)(Negative
3 retained earnings in tax returns deemed sufficient to establish defendant’s liabilities outweighed
4 its assets and thus it was “indeed insolvent.”); *In re Cox Motor Express of Greensboro, Inc.*, No.
5 14-10468, 2017 WL 1207517, at *10 (Bankr. M.D.N.C. Jan. 27, 2017) (“tax returns, especially
6 those showing significant negative retained earnings, can be used as proof of insolvency.”); *In*
7 *re Buffalo Auto Glass*, 187 B.R. 451, 453 (Bankr. W.D.N.Y. 1995) (“Trustee has provided a
8 copy of Debtor's corporate tax return for the time period in question, which
9 shows negative retained earnings. There being no evidence offered by Defendant
10 under Fed.R.Civ.P. 56(e) as to why that does not establish the corporation's insolvency at that
11 time, the Court finds that the tax return establishes Debtor's insolvency at the time of the
12 transfers by a preponderance of the evidence.”); *In re Vill. Concepts, Inc.*, No. AP 14-2054, 2015
13 WL 8030974, at *10 (B.A.P. 9th Cir. Dec. 4, 2015) (“based on Debtor's consistent and
14 substantial losses from 2008 through 2010, the accompanying negative retained earnings, and the
15 reported liabilities in excess of assets on the 2009 tax return, ‘it is implausible that Debtor was
16 solvent . . .”)

17 [REDACTED]
18 [REDACTED]
19 [REDACTED] *In re Washington Capital Aviation & Leasing*, 156 B.R. 167, 175 (Bankr. E.D.
20 Va. 1993) (“The exhibit indicates negative income from operations, negative net income,
21 and negative retained earnings. Given Airborne's doubtful financial outlook I find that the
22 adequate assurance of future performance has not been shown.”)

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] *Donald Palmer Co. v. Commissioner*, 69 T.C.M. (CCH) 1869, 1873 (1995)
27 (“[W]here, as here, the compensation resulted in negative retained earnings and a negative return
28 on shareholder equity ... it is reasonable to conclude that funds are being siphoned out of the

1 company disguised as salary.”) (citation and internal quotations omitted); *LabelGraphics, Inc. v.*
2 *Comm'r*, 221 F.3d 1091, 1100 (9th Cir. 2000).

3 Moreover, such transfers are to an “Insider” as defined by UFTA. “‘Insider’ includes: . . .
4 (b) If the debtor is a corporation: (1) A director of the debtor; (2) An officer of the debtor; (3) A
5 person in control of the debtor; (4) A partnership in which the debtor is a general partner; (5) A
6 general partner in a partnership described in subparagraph (4); and (6) A relative of a general
7 partner, director, officer or person in control of the debtor . . .” Nev. Rev. Stat. Ann. § 112.150.
8 Pursuant to NRS § 112.190, a “transfer made ... by a debtor is fraudulent as to a creditor whose
9 claim arose before the transfer was made ... if the debtor made the transfer ... without receiving a
10 reasonably equivalent value in exchange for the transfer ... and the debtor was insolvent at that
11 time or the debtor became insolvent as a result of the transfer....” Nev.Rev.Stat. § 112.190(1).
12 This section applies here because the Front Sight tax returns indicate substantial negative
13 retained earnings, i.e., the essence of insolvency.

14 In these circumstances involving transfers by an insolvent corporation to insiders there
15 are recognized indicia of fraud which establish a *prima facie* showing of a fraudulent transfer
16 and shift the burden to the party making the transfer to justify it. “[W]here the creditor
17 establishes the existence of certain indicia or badges of fraud, the burden shifts to the defendant
18 to come forward with rebuttal evidence that a transfer was not made to defraud the creditor. . . .
19 The defendant must show either that the debtor was solvent at the time of the transfer and not
20 rendered insolvent thereby or that the transfer was supported by fair consideration.” *Sportsco*
21 *Enterprises v. Morris*, 112 Nev. 625, 632 (1996)(citations omitted). “A number of these indicia
22 exist here: relationship between the transferor and transferees, the pendency or threat of
23 litigation, and insolvency or indebtedness of the transferor.” *Id.*

24 Accordingly, there is substantial evidence that the transfers to the Dynasty Trusts were in
25 breach of the CLA and violated UFTA.

26 **C. There Is Substantial Evidence To Support Application of the *Alter Ego* Doctrine**

27 “Nevada has long recognized that although corporations are generally to be treated as
28 separate legal entities, the equitable remedy of ‘piercing the corporate veil’ may be available to a

1 plaintiff in circumstances where it appears that the corporation is acting as the alter ego of a
2 controlling individual.” *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 902 (2000).

3 There are three elements necessary to prove alter ego doctrine: “(1) the corporation must
4 be influenced and governed by the person asserted to be the alter ego; (2) there must be such
5 unity of interest and ownership that one is inseparable from the other; and (3) the facts must be
6 such that adherence to the corporate fiction of a separate entity would, under the circumstances,
7 sanction fraud or promote injustice.” *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601, 747
8 P.2d 884, 886 (1987).

9 Facts which are considered indicia of potential *alter ego* include: (1) commingling of
10 funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate
11 assets as the individual's own; and (5) failure to observe corporate formalities. See *LFC Mktg.*
12 *Grp., Inc. v. Loomis*, 116 Nev. 896, 904 (2000); *North Arlington Medical Building, Inc. v.*
13 *Sanchez Construction Co.*, 86 Nev. 515, 522 n. 8 (1970). See *Carson Meadows Inc. v. Pease*, 91
14 Nev. 187, 191 (1975) (“Goldbeck commingled corporate funds with his own. He treated some
15 corporate assets as his own and manipulated them to suit himself. He appears to have negotiated
16 all of the corporate business, and truly may be said to have used the corporate shell as a conduit
17 for his individual enterprise.”); *Certain v. Sunridge Builders, Inc.*, 431 P.3d 38 (Nev.
18 2018)(“Hardy and Nelson treated SBI’s assets as their own as they paid themselves thousands of
19 dollars in shareholder distributions, assigned all rights and interests in an SBI promissory note to
20 themselves individually, and used SBI’s settlement money to defend the present action The
21 district court therefore erred in concluding that Hardy and Nelson were not SBI’s alter egos.”).

22 There is evidence of these factors regarding the relationship between Front Sight, the
23 Dynasty Trusts and the Piazzas. Ignatius Piazza is the dominating and controlling person for
24 both Front Sight and the two Dynasty Trusts.¹⁸ [REDACTED]

25 [REDACTED]
26 [REDACTED]

27 _____
28 ¹⁸ Indeed, Ignatius Piazza so controlled and dominated Front Sight operations that he maintained the books and records in his personal garage in California such that they were destroyed in the Northern California Wildfires. At a minimum this indicates that Front Sight did not maintain normal corporate formalities.

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[REDACTED]

Thus, LVD Fund has provided evidence of: (1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; and (4) treatment of corporate assets as the individual's own, sufficient to establish a prima facie claim that Front Sight is simply the alter ego of Ignatius and Jennifer Piazza . See *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 904 (2000).

D. Intentional Interference with Contractual Relationships

Jennifer Piazza correctly states the proper elements of a cause of action for interference with contractual relationships. ““In an action for intentional interference with contractual relations, a plaintiff must establish: (1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage.” *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 (Motion at 9:4-9). LVD Fund has provided evidence to satisfy each of these elements.

First, LVD Fund has established the existence of a valid contract, i.e., the CLA.

Second, because Front Sight and the Dynasty Trusts are under the common control of Ignatius Piazza, LVD Fund has established the element of knowledge of the contract.

Third, LVD Fund has provided evidence that the Dynasty Trusts, acting under the common control of Jennifer and Ignatius Piazza, acted intentionally to siphon money off from Front Sight to the Dynasty Trusts, thereby inducing breach of multiple provisions of the CLA. (Greer Decl. Ex. 4; CLA 5.18 – Distributions: "Borrower shall not directly or indirectly, prior to completion of all of the improvements or the Completion Date, (a) make any distribution of money

1 or property to any Related Party, or make or advance to any Related Party, or (b) make any loan or
2 advance to any Related Party, or ... (d) pay any fees or other compensation ... to itself or to any
3 Related Party, if any such payment in (a) through (d), inclusive, might adversely affect Borrower's
4 ability to repay the loan in accordance with its terms ..."; CLA at §§ 5.21 Related Party
5 Transactions- Loan Proceeds have been misappropriated to the Piazza family's personal uses;
6 CLA § 5.23 - "Borrower. will remain solvent").

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 Fourth, the contract has been disrupted in that Front Sight has breached the contract for
11 the specific benefit of Jennifer Piazza.

12 Fifth, LVD Fund has been damaged in that the CLA has been breached and the ability of
13 the borrower (Front Sight) to repay the loan has been impaired. CLA §5.23(i).

14 **E. Conversion**

15 As a threshold matter, whether a conversion has occurred **is a question of fact for the**
16 **jury**. See *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043, 1048 (Nev. 2000). The courts
17 recognize two exceptions to the general rule that money is not subject to conversion, which are
18 the money was "**wrongfully received by the party** charged with conversion, or [the] party
19 [must have been] under obligation to return the specific money to the party claiming it." *DFR*
20 *Apparel Co., Inc. v. Triple Seven Promotional Products, Inc.*, 2:11-CV-01406-APG, 2014 WL
21 4891230, at *3 (D. Nev. Sept. 30, 2014). The first exception applies here because the money
22 was wrongfully received by the Dynasty Trusts.

23 [REDACTED]
24 [REDACTED]

25 These payments were a direct violation of the CLA §§ 5.18 and 5.23 prohibiting transfers to
26 related parties. Thus, any distributions made to the Dynasty Trusts for the benefit of Jennifer
27 Piazza were "wrongfully received." This constitutes conversion. *DFR Apparel Co., Inc. v. Triple*

28

1 *Seven Promotional Products, Inc.*, 2:11-CV-01406-APG, 2014 WL 4891230, at *3 (D. Nev.
2 Sept. 30, 2014).

3 **F. Conspiracy**

4 Ms. Piazza also moves for summary judgment on Counterclaimants' claim for civil
5 conspiracy against Front Sight and the Piazzas (Mtn at 14:1 - 14:12 ; Statement of Facts at 30:9-
6 31:7). Although the intra corporate conspiracy doctrine would normally bar a civil conspiracy
7 claim where the co-conspirators are related parties, See *Collins v. Union Fed. Sav. & Loan Ass'n*,
8 99 Nev. 284, 303 (1983), the rule is subject to an important exception where, as here, the actions
9 taken by the individuals were beyond the scope of their employment and were for their
10 individual personal benefit. "In Nevada, therefore, a corporation cannot conspire with its
11 employees ***if those employees are acting within the course and scope of their employment.***"
12 *Laxalt v. McClatchy*, 622 F. Supp. 737, 744-46 (D. Nev. 1985)(emphasis added); *U-Haul Co. of*
13 *Nevada v. United States*, No. 2:08-CV-729-KJD-RJJ, 2012 WL 3042908, at *2 (D. Nev. July 25,
14 2012)("The intercorporate conspiracy doctrine requires a plaintiff stating a claim for conspiracy
15 between employees to plead plausible facts showing: 1) that the alleged conspirator acted outside
16 his official capacity, and 2) that he was acting for his individual advantage."); *O'Brien v.*
17 *Morgan Stanley DW, Inc.*, No. 3:07-CV-00046LRHVPC, 2008 WL 4224409, at *3 (D. Nev.
18 Sept. 10, 2008) ("agents of a corporate principal cannot conspire with each other ***unless they are***
19 ***acting for their individual advantage*** as opposed to their principal's advantage. ")(emphasis
20 added). Here, the transfers to the Dynasty Trusts (for the benefit of Jennifer Piazza) were clearly
21 for the individual advantage of Jennifer Piazza and not for Front Sight's benefit.

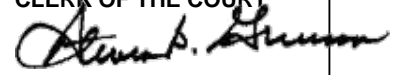
22 **V. CONCLUSION**

23 For the reasons set forth above, the Court should deny Jennifer Piazza's Motion for
24 Summary Judgment.

25 DATED: February 3, 2020

GREER & ASSOCIATES, APC

26
27 By: /s/ C. Keith Greer
C. KEITH GREER
28 Attorneys for Defendant



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JON FLEMING and LINDA STANWOOD

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

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

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

Defendants.

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

**DEFENDANT AND
COUNTERCLAIMANT LVD FUND'S
OPPOSITION TO
COUNTERDEFENDANT VNV DYNASTY
TRUST I AND VNV DYNASTY TRUST
II'S MOTION FOR SUMMARY
JUDGMENT**

Date: February 19, 2020
Time: 9:30 a.m.

AND RELATED COUNTERCLAIMS

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I. INTRODUCTION

Counterclaimant Las Vegas Development Fund, LLC (“LVD Fund”) submits this Memorandum of Points and authorities and the accompanying declarations in opposition to the Motion for Summary Judgment filed by Counter-Defendants VNV Dynasty Trust I and VNV Dynasty Trust II (collectively referred to herein as “Dynasty Trust”), attempting to evade responsibility for their part in diverting tens of millions of dollars from Front Sight into the Dynasty Trusts, in breach of the Construction Loan Agreement (“CLA”) between LVD Fund and Front Sight Management LLC (“Front Sight”).

Dynasty Trust’s Motion for Summary Judgment seizes upon a single finding of fact from the “Findings of Fact, Conclusions of Law, and Order Denying Defendant Las Vegas Development Fund LLC’s Motion to Dissolve Temporary Restraining Order and to Appoint a Receiver” (“1/23/20 TRO Order”). That finding, which is repeated and asserted as allegedly eviscerating every cause of action against Dynasty Trust, is that **Front Sight “supplied exhibits to establish project cost and expenditures...exceed the loan amounts advanced by LV Development...”** However, because findings in support of a temporary restraining order are preliminary and have no binding effect on subsequent proceedings, this single preliminary finding cannot provide any support for Piazza’s summary judgment motion. Moreover, since both sides submitted evidence on this in the TRO proceedings, the TRO proceedings establish that this is a controverted issue.

Dynasty Trust’s argument also mischaracterizes and severely overstates the significance of the single factual finding upon which Dynasty Trust bases its entire motion. Conflating these two separate and distinct time frames, i.e., pre-Construction Loan funding and post- Construction Loan funding, **simply does not demonstrate that the Construction Loan proceeds were applied to appropriate post-funding project expenditures as required by the CLA, or that Front Sight has met its obligation under the CLA to spend an amount equal to the Loan Proceeds on direct project costs that create jobs.**¹

¹ Pursuant to Section 5.3 of the CLA, Front Sight is required to: [P]rovide the documentation and supporting accounting records and contract documents necessary, in Lender’s discretion, to demonstrate that between the
LVD FUND OPPOSITION TO DYNASTY TRUSTS’ MOTION FOR SUMMARY JUDGMENT

1 In fact, based on Front Sight’s itemization of alleged Project expenditures, it has barely
2 spent \$4 million of the \$6.375 million dollars in Loan Proceeds on actual post-CLA Project
3 expenditures. Thus, there appears to be more than \$2 million in Construction Loan proceeds that
4 were diverted to the Dynasty Trusts.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 This evidence is sufficient to defeat Dynasty Trust’s Motion for Summary Judgment.

27 _____
28 Closing Date and the date of delivery of documentation not less than the total amount of the Advances has been spent directly or indirectly on the Project substantially in a form acceptable to Lender for compliance with the EB-5 Program. (See the 1/23/20 TRO Order at page 4, attached as Exhibit 1 to Dynasty Trust’s MSJ.)

1 **II. STATEMENT OF FACTS AND ISSUES OF LAW**

2 **A. The Holecek Loan is not a “Bridge Loan.”**

3 Dynasty Trust appears to argue that paying down the “Holecek Loan” (Greer Decl. Ex. 1)
4 both prior to and after the October 6, 2016 closing date for the CLA qualifies as construction
5 expenses to be considered when determining the number of jobs created when LVD Fund reports
6 to the USCIS, This is simply wrong. Pursuant to the USCIS Policy Manual:

7 “1. Bridge Financing: A developer or principal of a new commercial enterprise, either
8 directly or through a separate job-creating entity, may use interim, temporary, or bridge
9 financing, in the form of either debt or equity, prior to receipt of immigrant investor
10 capital. *If the project starts based on the interim or bridge financing prior to receiving
11 immigrant investor capital and subsequently replaces that financing with immigrant
12 investor capital, the new commercial enterprise may still receive credit for the job
13 creation under the regulations.*

14 Generally, the replacement of temporary or bridge financing with immigrant
15 investor capital should have been contemplated prior to acquiring the original temporary
16 financing. *However, even if the immigrant investor financing was not contemplated prior
17 to acquiring the temporary financing, as long as the financing to be replaced was
18 contemplated as short-term temporary financing that would be subsequently replaced by
19 more permanent long-term financing, the infusion of immigrant investor financing could
20 still result in the creation of, and credit for, new jobs.*

21 For example, if traditional financing originally contemplated to replace the
22 temporary financing is no longer available to the commercial enterprise, a developer is
23 not precluded from using immigrant investor capital as an alternative source. Immigrant
24 investor capital may replace temporary financing even if this arrangement was not
25 contemplated prior to obtaining the bridge or temporary financing.” (Emphasis added).

26 In other words, in order to qualify as expenditures creating new jobs, the expenditures must be
27 either directly from the EB-5 loan proceeds, or to repay a temporary bridge loan that covered
28 such expenses until the EB-5 loan becomes available.

Here, the “Holecek Loan,” reflected in the Deed of Trust recorded on February 17, 2006
(i.e., more than a decade before the CLA in this matter was executed), was used to finance the
original construction of the Front Sight Firearms Training Institute. (See Greer Decl. Ex. 1 and
Ex. 2). The 2006 Holecek loan therefore bears no relationship to the Resort Project² which is the

² The “Resort Project” is the construction of the Front Sight Resort & Vacation Club and an expansion of the facilities and infrastructure of the Front Sight Firearms Training Institute (“Training Facility”). The Project as defined - will include 102 timeshare residential units, up to 150 luxury timeshare RV pads, an 85,000 square foot restaurant, retail, classroom and offices building (to be known as the Patriot Pavilion) and related infrastructure and amenities. The Resort Project is **NOT** the construction of the original grounds of the Training Facility.

1 subject of the current dispute. Debt service on the Holecek loan was simply part of the ongoing
2 business operations of Front Sight – it had nothing to do with the proposed Resort Project.

3 Payment on the Holecek Loan thus benefitted Front Sight ongoing debt service
4 obligations rather than creation of new employment. The pre-funding pay down simply
5 reimbursed Front Sight for its pre-funding debt service obligations as part of its normal operating
6 expenses. (See, “Holecek note paydown prior to the closing date of the Construction Loan
7 Agreement \$6,004,000.00” (See, VNV MSJ Ex. 1, 1/23/20 TRO Order, p. 5, Finding of Fact
8 #5).) **Additionally, Front Sight admits that it used an additional \$2,054,000 of Construction**
9 **Loan proceeds to pay down the Holecek note after funding under the Construction Loan**
10 **Agreement.** (Id., p. 5, Finding of Fact # 5 [Holecek post CLA paydown \$1,422,000] and p. 6,
11 Finding of Fact #7 [Holecek post CLA paydown \$632,000]). These were misuses of the loan
12 proceeds to pay general operating expenses of Front Sight as opposed to Project Costs.

13 **B. The Project Timeline and Expenditures**

14 Although the motion conflates the two time periods, there are two distinct time frames for
15 the Project: (a) the time prior to funding of the Construction Loan; and (b) the time after funding
16 of the Construction Loan; i.e., pre- and post- October 6, 2016.

17 **1. Pre – Construction Loan Timeline and Expenditures**

18 Front Sight used the Construction Loan proceeds to pay down debts incurred years before
19 it ever even considered an EB-5 capital raise, and therefore those payments did not produce any
20 jobs that could count toward Front Sight’s obligation under the CLA. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Because neither of these liens related to construction on the Resort Project, Front Sight is
25 obligated per terms of the CLA to spend at least this same amount of money generated from
26 other sources, such as income from regular business operations, on actual Project Expenses.

27 **2. The Construction Loan Agreement and Post- Funding Expenditures**

28 _____

1 The evidence is that Front Sight’s true construction expenses on the Resort Project after
2 the Construction Loan closing date, as identified in the schedules incorporated in Findings of
3 Fact #5 and #7 of the 1/23/20 TRO Order, are only \$3,111,412.95.³ This amount is below the
4 amount of the \$6.375 million Construction Loan funding.

5 **D. Front Sight “Loan To Shareholders” Increased By Slightly Over \$6 Million**
6 **Shortly After The CLA Funded**

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 **E. Transfers to Dynasty Trust the Piazzas**

18 [REDACTED]
19 [REDACTED]

20 ///
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23 ///
24 ///

27 ³ Adding up the line items in the “Expense Category” tables in Findings #5 and #7 in the 1/23/20 TRO Order that
28 relate to construction costs after the CLA closing, and related project advisory fees, shows that only \$3,111,412.95
has actually been spent on the Resort Project since the CLA closed, i.e., much less than the \$6,375 LVD Fund lent to
Front Sight.

⁴ Greer Decl. Ex. 3, pg. 13181: Front Sight 2016 Form 1120S: Schedule K, ln7).

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[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. The 2016 and 2017 Front Sight Schedule L Balance Sheet Shows Front Sight Was Insolvent When It Made the Distributions to the Dynasty Trusts

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵ Greer Decl. Ex. 3, pg. 13181: Front Sight 2016 Form 1120S: Schedule K, ln7).
⁶ Greer Decl. Ex. 3, pgs. 13243-44: Front Sight 2017 Form K-1, sec. 16(D)).
⁷ Greer Decl. Ex. 3, pgs. 13300-01: Front Sight 2018 Form K-1, sec. 16(D)).
⁸ Greer Decl. Ex. 3, pg. A-013181: Front Sight 2016 Form 1120S, ln. 27.
⁹ Greer Decl. Ex. 3, pg. A-13215: Front Sight 2016, Schedule L, Total Retained Earnings.
¹⁰ Greer Decl. Ex. 3, pg. A-013188: Front Sight 2016 Schedule M-3, ln. 12.
¹¹ Greer Decl. Ex. 3, pg. A-013238: Front Sight 2017 Form 1120S, ln. 27.
¹² Greer Decl. Ex. 3, pg. A-13272: Front Sight 2017, Schedule L, Total Retained Earnings.
¹³ Greer Decl. Ex. 3, pg. A-013245: Front Sight 2018 Schedule M-3, ln. 12.
¹⁴ Greer Decl. Ex. 3, pg. A-013295: Front Sight 2018 Form 1120S, ln. 27.
¹⁵ Greer Decl. Ex. 3, pg. A-13334: Front Sight 2018, Schedule M-2, Total Retained Earnings.
¹⁶ Greer Decl. Ex. 3, pg. A-013302: Front Sight 2018 Schedule M-3, ln. 12.

1 [REDACTED]

2 [REDACTED]

3 **III. LEGAL STANDARD FOR SUMMARY JUDGMENT**

4 Summary judgment is appropriate when there are no genuine issues of material fact in
5 dispute. NRCp 56. To obtain summary judgment, the moving party has the burden of showing
6 the absence of genuine issues of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123
7 Nev. 598, 602, 172 P.3d 131, 134 (2007). In deciding the propriety of a summary judgment **all**
8 **evidence favorable to the nonmoving party will be accepted as true.** See *Short v. Hotel*
9 *Riviera, Inc.*, 79 Nev. 94, 103, 378 P.2d 979, 984 (1963). The purpose of summary judgment **is**
10 **not to cut litigants off** from their right of trial and therefore, should only be granted where the
11 “moving party is entitled to judgment as a matter of law and **where it is quite clear what the**
12 **truth is[.]”** *Sartor v. Arkansas Gas Corp.*, 321 U.S. 620, 64 S.Ct. 724, 88 L.Ed. 967 (emphasis
13 added).

14 To defeat a summary judgment motion, the nonmoving party need merely come forward
15 with evidence sufficient to establish the existence of any disputed element essential to that
16 party's case, and for which that party will bear the burden of proof at trial. *Celotex Corp. v.*
17 *Catrett*, 477 U.S. 317, 322, 102 S.Ct. 2548 (1986).

18 **IV. ARGUMENT**

19 **A. The Findings Of Fact From A Preliminary Hearing Have No Preclusive Effect and**
20 **Dynasty Trust’s Reliance On Them Is Misplaced**

21 Dynasty Trust’s Motion for Summary Judgment relies exclusively on Findings of Fact from
22 the Preliminary Order denying LVD Fund’s Motion for Appointment of a Receiver. This
23 reliance is misplaced. It is well established that rulings and findings of fact on preliminary
24 matters are just that – preliminary – and have no impact on subsequent proceedings.
25 “[D]ecisions on preliminary injunctions are just that—preliminary . . .” *S. Oregon Barter Fair v.*
26 *Jackson Cty., Oregon*, 372 F.3d 1128, 1136 (9th Cir. 2004). “The findings entered . . . in denying
27 plaintiff's motion for a preliminary injunction are not binding on this Court in conducting a trial
28 [on] the merits.” *Nat'l Retailers Corp. of Arizona v. Valley Nat. Bank*, 411 F. Supp. 308, 312 (D.

1 Ariz. 1976), *aff'd in part, appeal dismissed in part sub nom. Nat'l Retailers Corp. of Arizona v.*
2 *Valley Nat. Bank of Arizona*, 604 F.2d 32 (9th Cir. 1979); *Chinatown Neighborhood Ass'n v.*
3 *Harris*, 33 F. Supp. 3d 1085, 1094 (N.D. Cal. 2014), aff'd, 794 F.3d 1136 (9th Cir. 2015)
4 (“[D]ecisions on preliminary injunctions are not binding at trial on the merits...”).

5
6 “The purpose of a preliminary injunction is merely to preserve the
7 relative positions of the parties until a trial on the merits can be
8 held. Given this limited purpose, and given the haste that is often
9 necessary if those positions are to be preserved, a preliminary
10 injunction is customarily granted on the basis of procedures that
11 are less formal and evidence that is less complete than in a trial on
12 the merits. A party thus is not required to prove his case in full at a
13 preliminary-injunction hearing. *Progress Development Corp. v.*
14 *Mitchell*, 286 F.2d 222 (C.A.7 1961), and the findings of fact and
15 conclusions of law made by a court granting a preliminary
16 injunction are not binding at trial on the merits . . .”

17 *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 1834, 68 L. Ed. 2d 175 (1981)

18 “These rules are partly pragmatic, *see Camenisch*, 451 U.S. at 395 (“a preliminary
19 injunction is customarily granted on the basis of procedures that are less formal and evidence
20 that is less complete than in a trial on the merits”), and partly rooted in the fundamental principle
21 that courts should only decide actual issues of actual consequence to the parties, not provide
22 advisory opinions on abstract questions of law or policy.” *All. for Am.'s Future v. State ex rel.*
23 *Miller*, 128 Nev. 878, 381 P.3d 588 (2012).

24 Applying these principles to the present Motion for Summary Judgment, the Findings of
25 Fact from the prior preliminary hearing are just that – preliminary – and cannot support summary
26 judgment.

27 **B. There Is Substantial Evidence That The Transfers to the Dynasty Trusts Were**
28 **In Violation of The Uniform Fraudulent Transfer Act**

In addition to the express terms of Section 5.18 of the CLA,¹⁷ which forbids the Piazzas
from diverting funds from Front Sight in a manner that materially affects Front Sight’s solvency
and ability to complete the Resort Project, the Uniform Fraudulent Transfer Act exists to protect

¹⁷ Section 5.18 of the CLA provides that: “Borrower shall not . . . make any distribution of money or property to a Related Party . . . if any such payment . . . might adversely affect Borrower’s ability to repay the loan . . .”

1 creditors such as LVD Fund. “The UFTA is designed to prevent a debtor from defrauding
2 creditors by placing the subject property beyond the creditors' reach.” *Herup v. First Bos. Fin.,*
3 *LLC*, 123 Nev. 228, 232 (2007). “Three types of transfers may be set aside under the UFTA: (1)
4 actual fraudulent transfers; (2) constructive fraudulent transfers; and (3) certain transfers by
5 insolvent debtors.” *Herup v. First Bos. Fin., LLC*, 123 Nev. 228, 233 (2007).

6 “A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's
7 assets at a fair valuation.” Nev. Rev. Stat. Ann. § 112.160 (Uniform Fraudulent Transfer Act)).
8 As set forth *infra*, Front Sight’s transfer of funds to the Trust Defendants appears to be a transfer
9 to an insider in violation of the Nevada Uniform Fraudulent Transfer Act because Front Sight
10 was insolvent at the time the transfer was made and there was no fair consideration received.
11 Nev. Rev. Stat. Ann. § 112.180 (“The transfer or obligation was to an insider”). “A transfer
12 made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if
13 the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time,
14 and the insider had reasonable cause to believe that the debtor was insolvent.” Nev. Rev. Stat.
15 Ann. § 112.190. [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED] *In re Flutie New York Corp.*, 310 B.R. 31, 52 (Bankr. S.D.N.Y.
19 2004)(Negative retained earnings in tax returns deemed sufficient to establish defendant’s
20 liabilities outweighed its assets and thus it was “indeed insolvent.”); *In re Cox Motor Express of*
21 *Greensboro, Inc.*, No. 14-10468, 2017 WL 1207517, at *10 (Bankr. M.D.N.C. Jan. 27, 2017)
22 (“tax returns, especially those showing significant negative retained earnings, can be used as
23 proof of insolvency.”); *In re Buffalo Auto Glass*, 187 B.R. 451, 453 (Bankr. W.D.N.Y.
24 1995) (“Trustee has provided a copy of Debtor's corporate tax return for the time period in
25 question, which shows negative retained earnings. There being no evidence offered by Defendant
26 under Fed.R.Civ.P. 56(e) as to why that does not establish the corporation's insolvency at that
27 time, the Court finds that the tax return establishes Debtor's insolvency at the time of the
28 transfers by a preponderance of the evidence.”); *In re Vill. Concepts, Inc.*, No. AP 14-2054, 2015

1 WL 8030974, at *10 (B.A.P. 9th Cir. Dec. 4, 2015) (“based on Debtor's consistent and
2 substantial losses from 2008 through 2010, the accompanying negative retained earnings, and the
3 reported liabilities in excess of assets on the 2009 tax return, ‘it is implausible that Debtor was
4 solvent . . .”)

5 At a minimum, the balance sheet showing negative retained earnings raises substantial
6 questions regarding Front Sight’s ability to provide adequate assurance of its ability to perform
7 under the CLA. *In re Washington Capital Aviation & Leasing*, 156 B.R. 167, 175 (Bankr. E.D.
8 Va. 1993) (“The exhibit indicates negative income from operations, negative net income,
9 and negative retained earnings. Given Airborne's doubtful financial outlook I find that the
10 adequate assurance of future performance has not been shown.”)

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] *Donald Palmer Co. v. Commissioner*, 69 T.C.M. (CCH) 1869, 1873 (1995)
15 (“[W]here, as here, the compensation resulted in negative retained earnings and a negative return
16 on shareholder equity ... it is reasonable to conclude that funds are being siphoned out of the
17 company disguised as salary.”) (citation and internal quotations omitted); *LabelGraphics, Inc. v.*
18 *Comm'r*, 221 F.3d 1091, 1100 (9th Cir. 2000).

19 Moreover, such transfers are to an “Insider” as defined by UFTA. “‘Insider’ includes: . . .
20 (b) If the debtor is a corporation: (1) A director of the debtor; (2) An officer of the debtor; (3) A
21 person in control of the debtor; (4) A partnership in which the debtor is a general partner; (5) A
22 general partner in a partnership described in subparagraph (4); and (6) A relative of a general
23 partner, director, officer or person in control of the debtor . . .” Nev. Rev. Stat. Ann. § 112.150.
24 Pursuant to NRS § 112.190, a “transfer made ... by a debtor is fraudulent as to a creditor whose
25 claim arose before the transfer was made ... if the debtor made the transfer ... without receiving a
26 reasonably equivalent value in exchange for the transfer ... and the debtor was insolvent at that
27 time or the debtor became insolvent as a result of the transfer....” Nev.Rev.Stat. § 112.190(1).

28