GARMAN TURNER GORDON LLP
GREGORY E. GARMAN, ESQ.
Nevada Bar No. 6665
E-mail: ggarman@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Telephone (725) 777-3000
Facsimile (725) 777-3112

Attorneys for Ignatius Piazza, Jennifer Piazza, VNV Dynasty Trust I, and VNV Dynasty Trust II

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

In re:	Case No.: 22-11824-ABL
FRONT SIGHT MANAGEMENT LLC,	Chapter 11
Debtor.	Date: November 18, 2022 Time: 9:30 a.m.

JOINDER TO DEBTOR'S MOTION FOR CONFIRMATION OF DEBTOR'S SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION AND OMNIBUS RESPONSE TO OBJECTIONS THERETO

Dr. Ignatius Piazza, Jennifer Piazza, VNV Dynasty Trust I, and VNV Dynasty Trust II (collectively, the "Piazzas"), by and through their counsel, the law firm of Garman Turner Gordon LLP, hereby file this joinder to the *Debtor's Motion for Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization* [ECF No. 439] (the "Motion") filed by Front Sight Management, LLC ("Debtor") and omnibus response to (1) the *Opposition to Debtor's Motion for Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization* [ECF No. 484] (the "Meacher Objection") filed by Michael Meacher, dba Bankgroup Financial Services ("Meacher") and the *Objection of the Official Committee of Unsecured Creditors to Confirmation of Debtor's Second Amended Chapter 11 Plan of Reorganization* [ECF No. 495] (the "Committee Objection," and

together with the Meacher Objection, the "Objections") by the Official Committee of Unsecured Creditors.[1]

This joinder and response (the "Response") is made and based on the points and authorities provided herein, as well as the papers and pleadings filed on the docket in the Debtor's chapter 11 case, judicial notice of which is respectfully requested pursuant to Federal Rule of Evidence 201, and such other and further evidence as may be provided in advance of and at the hearing on plan confirmation.

I. INTRODUCTION

Dr. Piazza's intent and desire has always been to build a full service vacation destination providing for first class firearm training and related operations. That intent and desire was thwarted when, after the Debtor secured $75 million in promised funding to build the development, Las Vegas Development Fund, LLC ("LVDF") defaulted on its obligations by ultimately only raising and funding $6,375,000, less than 10% of the amount promised. LVDF's actions, or more appropriately, its failures, caused Debtor's financial hardship and led to the filing of this Chapter 11 Case. Nonetheless, in order to avoid a sale under the DIP Order,[2] and to secure the best outcome for Debtor's creditors and members (which is a material improvement over the outcome contemplated by the FS DIP stalking horse agreement), Debtor negotiated a plan that maintains a future gun range for members and creates a $3,000,000 pool for the benefit unsecured creditors (which would have been $3,500,000 if an additional $500,000 was not needed for professional fees because counsel to the UCC exceeded their budgeted amounts). The continuation of the gun range for the benefit of current members and this pool of funds would otherwise not be available under the terms of the FS DIP stalking horse agreement.

As part of this improved Plan and the treatment thereunder, Nevada PF, LLC ("Nevada PF") has required a broad 10-year consulting agreement and nationwide non-compete agreement from Dr.

[1] This Reply is not intended to address all of the arguments raised in the Objections, but seeks to offer clarification on the incorrect allegations and assertions regarding Dr. Piazza. In doing so, Dr. Piazza does not concede that any other arguments have merit as Dr. Piazza understands those will be addressed by Debtor.

[2] ECF No. 228

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

Piazza personally, in addition to a requirement that he provide marketing and other services for the same 10-year period. All of these terms are a condition to Nevada PF's willingness to support the plan and improve the terms provided to them under the FS DIP stalking horse agreement. There is no violation of the absolute priority rule as there is not a retention of any property on behalf of the Piazzas' prior equity interest, and they are not improper third-party releases under the Plan.

Ignoring this realty, and in a thinly veiled attempt to gain leverage where it has none, the Committee Objection turns its focus to unleashing a barrage of allegations against Dr. Piazza insinuating that he has done nothing over the last ten years other than take money from Debtor. The Committee Objection misleadingly tells only half of the story because it intentionally ignores the other critical information that has been in the Committee's possession such the beginning of this case: Dr. Piazza has consistently provided funds to Debtor to continue operations and, in fact, in at least the past four years alone, infused more than $2,000,000 than was disbursed in his attempts to protect the creditors and their membership fees in spite of LVDF's harm. Moreover, while incorrectly arguing for a ten year look back period, even if correct (it is not), the Committee Objection fails entirely to consider any of the other elements that would have to be proven in order for any party to prevail on a fraudulent transfer claim against the Piazzas. Ultimately, there are no viable claims for fraudulent transfer against the Piazzas, leading to the only conclusion that the best interest test is satisfied because creditors will receive more under the current proposed plan than they would in a chapter 7.

II. LEGAL ARGUMENT AND ANALYSIS

A. The Plan Does Not Violate the Absolute Priority Rule.

The Objections both argue that the plan violates the absolute priority rule by contending that Dr. Piazza is retaining property on account of his equity interest in the Debtor. *See* Meacher Objection, p. 7, l. 21 – p. 10, l. 18; *see* Committee Objection, p. 15, l. 16 – p. 16, l. 12. He is not.

Section 1129(b)(2)(B)(ii) provides that, with respect to a class of unsecured claims:[3]

> **(ii)** the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan ***on account of such junior claim or interest any property***, except that in a case in which the debtor is an individual, the debtor

[3] As an initial matter, a reserve has been set aside for Meacher's secured claim, so it is unclear how he contends he has standing to even raise this argument, and the unsecured creditor class has accepted the Plan.

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

> may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

11 U.S.C. § 1129(B)(2)(b)(ii)(emphasis added).

Dr. Piazza is not receiving anything through the Plan on account of his equity interest. Instead, Nevada PF negotiated for a consulting agreement, which also contains a highly valuable non-compete and future services requirement, pursuant to which Dr. Piazza, among other things, assists with marketing and prosecuting objections to claims and certain causes of action. As Dr. Piazza has been successful and experienced for more than two decades, this was a critical component to Nevada PF. In exchange, Dr. Piazza is agreeing to forego his ability to otherwise earn a living in this space which, based on Dr. Piazza's prior success and likely continued success had LVDF not defaulted on its contractual promises, is significant.

This case is not like *In re DBSD North America, Inc*., 634 F.3d 79 (2d Cir. 2011), on which Meacher relies. *See* Meacher Objection, pp. 8-9. In that case, as part of the plan, the plan proponent purported to "gift" equity holders shares and warrants in the reorganized debtor. *Id.* at 95. Specifically, the plan expressly provided :

> .... In full and final satisfaction, settlement, release, and discharge of each Existing Stockholder Interest, and on account of all valuable consideration provided by the Existing Stockholder, including, without limitation, certain consideration provided in the Support Agreement, ... *the Holder of such Class 9 Existing Stockholder Interest shall receive the Existing Stockholder Shares and the Warrants.*

Id. (emphasis in original). Given this provision, the Court found, because it had to, that the "existing shareholder received 'property,' that it did so 'under the plan,' and that it did so 'on account of' its prior, junior interest. *Id*. at 96-97. The Court did not, however, go further:

> We need not decide whether the Code would allow the existing shareholder and Senior Noteholders to agree to transfer shares outside of the plan, for, on the present record, the existing shareholder clearly receives these shares and warrants "under the plan."

Id. at 95.

Simply, the absolute priority rule prevents an equity holder from retaining its equity interests if creditors are not otherwise being paid. It does not prevent a reorganized debtor from

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

voluntarily entering into an agreement with prior management. Here, Dr. Piazza is not receiving shares or warrants in the reorganized debtor, he is not receiving anything under the plan, and he is not receiving anything on account of his equity interests in Debtor. He is entering into a separate consulting agreement and non-compete which is at the insistence of Nevada PF and provides a valuable benefit to Nevada PF. This does not violate the absolute priority rule.

B. <u>The Releases of the Piazzas Are Not Impermissible Third-Party Releases Under the Plan.</u>

The Objections contend that the Piazzas are receiving broad third-party releases under the Plan that fail to comply with Ninth Circuit Law. *See* Meacher Objection, p. 2, ll. 13-15; pp. 10-12; *see* Committee Objection, p. 16, l. 13 – p. 17, l. 12. They are not.

As quoted in the Meacher Objection, the plan provides for, as plans typically do, that the Confirmation Order will enjoin future prosecution on claims that are "released, discharged, or terminated pursuant to the Plan." *See* Plan, Section V.B. The claims against the Piazzas are not being released, discharged, or terminated pursuant to the plan. The claims against the Piazzas are being purchased by Nevada PF as part of its acquisition of equity in the Debtor. The reorganized debtor, here through Nevada PF, can do whatever it chooses with the assets that it acquires and in this case, Nevada PF has chosen to dismiss the claims (which are lacking in merit in any event) and for good reason. As stated by Nevada PF in its reply to these same objections raised in connection with the Disclosure Statement:

> With due respect to the Committee, what FS DIP and Nevada PF aim to achieve in acquiring the Chapter V causes of action and other litigation claims belonging to Debtor is the peace of mind and freedom that comes from knowing that litigation or claims are not going to appear out of nowhere as they try to put their newly purchased reorganized business on sound financial and operational footing for the long haul. Not to be glib, but FS DIP and Nevada PF aim and desire to run a reorganized business here, not litigate or be drawn into litigation over the legacy of the past. What FS DIP and Nevada PF are buying are certainty and peace of mind for themselves and for the "2A" community with which they intend to do a robust business going forward.
>
> Briefly, if more lawsuits appear out of the woodwork, the fear is that the reorganized business's new customers will think something to the effect of, "Here we go again," given all of the litigation that plagued Debtor's legacy business here. At bottom, there is a prehistory to Debtor's business that is steeped in and, in some

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

> ways, tainted by, ongoing, protracted, and (oftentimes) demoralizing litigation that FS DIP and Nevada PF aim to cut off at the root. This has nothing to do with obtaining releases of any of Debtor's insiders or anyone else; rather, it has to do with doing everything FS DIP and Nevada PF can do make a clean and sharp break with Debtor's troubled litigation past (however meritorious or (more likely) meritless that litigation may otherwise have been). And that is why the purchase of these litigation claims is an integrated part of the deal – to accomplish a legitimate and understandable business objective

See ECF No. 338, p. 4, l. 21 – p. 5, l. 2.

C. <u>The Best Interest Test Is Not Violated Because the Unsecured Creditors Will Receive More than they Would in a Liquidation Because the Purported Claims that the Committee Contends Would Form the Basis For Recovery Do Not Have Value.</u>

The Committee spends the majority of the Committee Objection making unsupported and misleading allegations to try to lead this Court, and the creditor base, to a conclusion that the unsecured creditors have an alternative path to recovery by tanking a continued business in which many members surely wish to participate and instead opting only to pursue years of future litigation. *See* Committee Objection, p. 12, l. 23. – p. 15, l. 15. They do not.

1. The Committee Objection Ignores the Value Unsecured Creditors Are Receiving Under the Plan.

The Committee Objection first seems to largely ignore that the unsecured creditors are receiving $3,000,000 under the plan and the added benefit to members from the Debtor's business and property being reorganized into a world class "2A" experience. This is substantial value provided to the unsecured creditors that would not otherwise be available absent the plan.

Instead, the Committee diminishes this value by comparing the benefit to, what the Committee knows, is an inflated claim pool of $74 billion (not a typo) of filed claims to suggest that the creditors are not receiving much on account of their claims. This is incredibly misleading. As the Committee is aware, many of the filed claims seek recovery well in excess of any amounts actually provided by the creditor to the Debtor. As a result, there are currently pending (and largely unopposed) objections to a significant amount of the claims. *See* ECF Nos. 411, 426, 442, 480. Based on this alone, the claim pool is reduced to close to $15 million. Moreover, Debtor anticipates more omnibus claim objections to further reduce the claim pool to reflect the actual

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

value received by the Debtor. As such, and as supported by the liquidation analysis prepared by Debtor's financial advisors using this information, the unsecured creditor pool is likely no more than $15,000,000, and instead, closer to $11,000,000, which provides for creditors to receive between 20-30% of their claims, in addition to the benefit of the continued range operations through the reorganized debtor.

2. The Purported Claims Against the Piazzas are Not Legitimate Claims That Would Provide Meaningful Recovery to the Estate.

The Committee Objection next contends that unsecured creditors, currently slated to received $3,000,000 under the Plan and the benefit of a continued reorganized debtor, would fare better under a liquidation than they would in a sale. It does so by contending that Debtor has viable claims against Dr. Piazza for distributions made to Dr. Piazza over the past ten years. This is incorrect. Among other things, the Committee cannot extend the statutory look-back period of four-years, the period in which Dr. Piazza indisputably infused more than $2,000,000 than was distributed to continue to fund operations, and even if it could, the Committee has fallen woefully short of presenting any evidence that viable claims exist.

a. Dr. Piazza Has Infused Over $2,000,000 More than Was Disbursed to Him in the Last Four Years.

As stated in the Debtor's Statement of Financial Affairs, the support for which Dr. Piazza understands was provided to the Committee immediately upon the retention of its counsel and financial advisors, in the four years prior to the Petition Date, Dr. Piazza continued to fund Debtor's losses in his attempts to maintain the business as a going concern. These efforts came to an end when Dr. Piazza, losing the support of members, was unable to continue to single handedly fund the ever crushing litigation with LVDF and was forced to file this Chapter 11 Case. That Dr. Piazza has a net loss of over $2,000,000 as a result of the amounts he funded to the Debtor prior to the Petition Date is information that is known to the Committee, but ignored in the Committee Objection.

b. The Committee Cannot Extend the Look-Back Period More than Four Years.

Knowing full well the any avoidance actions pursued under state statutes of limitations

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

would fail, the Committee argues that, because the IRS filed a claim, the Committee is entitled to a 10-year look back period. *See* Committee Objection, p. 14, ll. 3-9. However, there is no binding Ninth Circuit precedent that recognizes this result. Indeed, even the Committee has failed to cite a single case that would be controlling on this Court. *See* Committee Objection, fn. 49.

Furthermore, the IRS Claim in this case appears to be asserted as a penalty based on a failure to file certain forms, which Dr. Piazza believes is being remedied and will result in resolution of the claim. Even if it does stand, as it appears to be a penalty, and not for any actual tax imposed, assessed, or unpaid, it is not the type of claim for which the IRS would even have a ten-year look back period even under the non-binding caselaw that the Committee does cite. Specifically, the premise for using the IRS as a creditor that permits a trustee to expand the relevant look-back period to 10 years is found in 26 U.S.C. § 6502. *See* Committee Objection, p. 14, ll. 3-5. That section of the Internal Revenue Code, titled "collection after assessment," provides for collection of any ***tax imposed*** within 10 years after the assessment of the tax. Here, the IRS Claim is not based on any tax imposed. There is no support, much less any cited by the Committee, that this type of asserted IRS claim is subject to the same 10-year recovery period.

Finally, even if this Court were to recognize an argument that a 10-year look back period could apply, such look back period is not without limitations. Indeed, there are several limitations that the Committee has not considered including: (1) the requirement that the IRS be both a creditor at the time of the transfer and have an allowable claim for the same tax liability in the bankruptcy case (in this case, it is not); (2) that the IRS must have assessed the tax liability before it may take action under IRC § 6502 (in this case, it has not); (3) that the trustee must first exhaust all remedies against the transferor before seeking recovery from the transferee (in this case, it has not); and (4) that allowing the trustee to utilize the IRS as a golden or triggering creditor leads to an absurd result by making the bankruptcy and state statutes of limitations meaningless (in this case, it does).

Thus, while the Committee argues in a single general paragraph that the look-back period has been extended to 10-years solely because the IRS has filed a proof of claim, it has not. The Committee does not have a likelihood, much less a certainty, that it could ever seek to recover any

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

amounts beyond four years which is fatal to its analysis that the unsecured creditors could somehow recover more in a liquidation than through the current proposed plan.

c. Even if the Committee Could Extend the Look-Back Period to 10-Years, the Committee Cannot Establish that any Colorable Claims Against the Piazzas Exist.

The Committee's argument that the unsecured creditors could recover more in a liquidation than through the Plan is based largely on its contention that that Debtor generated $41.2 million of net taxable income from 2012 through 2020, which the Committee contends was distributed entirely to Dr. Piazza and his trusts. *See* Objection, p. 14, l. 10 - p. 15, l. 2. However, the Committee's one-sided analysis is not only wrong and misleading, but it also fails to even try to articulate how the Committee could even allege any of the other elements in order to establish even a *prima facie* fraudulent transfer claim. Put another way, the Committee has not, and cannot, even allege a *prima facie* case for fraudulent transers.

First, the fact that Debtor has generated income, on which the Piazzas paid significant taxes is, in and of itself, significant evidence of the fact that Debtor was not insolvent, the first step in an fraudulent transfer analysis. It is unclear to Dr. Piazza how the Committee could even allege that amounts used to pay taxes on income generated could ever form the basis for a fraudulent transfer claim.

Second, the Committee does not, anywhere it is objection, allege that it could satisfy other elements of a fraudulent transfer case. There is not even a discussion of the elements necessary to meet its initial burden for a constructive or actual fraudulent transfer case.

Third, and as further set forth above, the Committee Objection completely ignores the other side of the equation, which is all the money that the Piazzas have infused into the Debtor, a net $2,000,000 in excess of distributions in the past four years.

Simply, given the amount infused by Dr. Piazza in excess of the amount disbursed during the statutory look back period, Debtor's solvency, Debtor's profitability, and the large amount of income tax paid related thereto, there are no viable avoidance claims that could be initiated by the Committee, much less ones that, after payment of fees and costs to pursue, would provide the unsecured creditors with a greater recovery than they are currently receiving under the plan.

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

d. The 2005 Class Action Is Irrelevant to Confirmation and Not Evidence of any Viable Claims Against Dr. Piazza.

That the Committee Objection is no more than an attempt to gain leverage in these proceedings without having actual arguments to raise is perhaps most evident by the Committee's reliance on a settled matter as purported proof of the validity of claims against Dr. Piazza. The Committee Objection spends no less than three pages, and over forty-five pages of exhibits, discussing these allegations as if they were somehow proven or admitted earlier. They were not.

As acknowledged by the Committee, the allegations set forth in the 2005 Class Action were disputed and, as conceded by the Class Claimants' counsel in its own pleadings to the court in that matter:

> The Defendants have denied and continue to deny each and all claims and contentions alleged by the Lead Plaintiffs in the Litigation. The Defendants contend that they met, and continue to meet, their obligations to all Class Members and that any reduction in membership price offers were due to memberships being offered with less benefits, such as course certificates for first time students, pro shop discounts, etc. The Defendants have also denied and continue to deny, inter alia, the allegations that the Lead Plaintiffs or the Settlement Class have suffered damage or were harmed by the conduct alleged in the Class Action Complaint.
>
> Nevertheless, and without admitting any wrongdoing or liability, the Defendants have concluded that protracted litigation, even if they were to prevail, would be expensive and continue to severely harm the company's ability to properly service its members. Thus Defendants have determined that it is desirable and beneficial for them to fully and finally end this Litigation and the ongoing harm it is causing to them by settling the case in the manner and upon the terms and conditions set forth in this Settlement Agreement

See Case No. 5:05-cv-04532-JW, ECF No. 120.

The fact that claims were made, which claims were contested by the Debtor and Dr. Piazza, *and continue to be contested*, but were ultimately settled for the purposes of preventing protracted and expensive litigation is wholly irrelevant to any analysis as to whether the Committee has valid claims in connection with this case.[4] All references to such claims as evidence of liability here

[4] Moreover, Committee counsel is no doubt aware that, pursuant to Fed. R. Evid. 408:

> evidence of the following is not admissible….either to prove to disprove the validity …of a disputed claim...:

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

(i.e., more than half of the Committee Objection) should be stricken or, at a minimum, ignored by this Court.

III. CONCLUSION

Based on the foregoing, the Piazzas respectfully request that the Court confirm the plan, and for such other relief as this Court deems just and necessary.

DATED this 11th day of November, 2022.

GARMAN TURNER GORDON LLP

By: */s/Teresa Pilatowicz*
GREGORY E. GARMAN, ESQ.
TERESA M. PILATOWICZ, ESQ.
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Attorneys for Ignatius Piazza, VNV Dynasty Trust I, and VNV Dynasty Trust II

---

(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim

Yet, that is exactly what the Committee tries to do here.

Garman Turner Gordon
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000