

1 GARMAN TURNER GORDON LLP
 2 GREGORY E. GARMAN, ESQ.
 Nevada Bar No. 6665
 E-mail: ggarman@gtg.legal
 3 TALITHA GRAY KOZLOWSKI, ESQ.
 Nevada Bar No. 9040
 E-mail: tgray@gtg.legal
 5 TERESA M. PILATOWICZ, ESQ.
 Nevada Bar No. 9605
 E-mail: tpilatowicz@gtg.legal
 7 7251 Amigo Street, Suite 210
 Las Vegas, Nevada 89119
 Telephone (725) 777-3000
 8 Facsimile (725) 777-3112

9 *Attorneys for Reorganized Debtor*
 10 *Front Sight Management LLC*

11 **UNITED STATES BANKRUPTCY COURT**
 12 **FOR THE DISTRICT OF NEVADA**

13 In re: 14 FRONT SIGHT MANAGEMENT LLC, 15 Debtor.	Case No.: 22-11824-ABL Chapter 11 <u>Hearing Date and Time</u> Date: March 24, 2023 Time: 9:30 a.m.
---	--

17 **OPPOSITION TO LAS VEGAS DEVELOPMENT FUND, LLC’S MOTION FOR**
 18 **LIMITED PROTECTIVE ORDER**

19 Reorganized Debtor Front Sight Management LLC (“Front Sight”), by and through its
 20 counsel, the law firm of Garman Turner Gordon LLP, hereby submits its opposition (the
 21 “Opposition”) to *Las Vegas Development Fund, LLC’s Motion for Limited Protective Order* [ECF
 22 No. 736] (the “Motion”) filed by Las Vegas Development Fund, LLC (“LVDF”) on March 6,
 23 2023, as modified by the *Notice of Partial Withdrawal of Las Vegas Development Fund, LLC’s*
 24 *Motion for Limited Protective Order* [ECF No. 745] (the “Withdrawal Notice”). This Opposition
 25 is supported by the memorandum of points and authorities herein, the record in the above-
 26 captioned case, judicial notice of which is hereby requested, and any argument by counsel at the
 27 hearing on the Motion.
 28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **INTRODUCTION**¹

4 Front Sight and LVDF are parties to a Construction Loan Agreement (as amended, the
5 “CLA”) in which LVDF was contractually obligated to fund a \$75,000,000, later reduced to
6 \$50,000,000, loan to Front Sight for the construction of the Front Sight Resort and Vacation Club
7 (the “Project”). LVDF breached the CLA when it acknowledged that it could not, and/or would not,
8 fund the promised Commitment, advancing only \$6,375,000, less than 13% of the amount ultimately
9 promised. LVDF’s failures and breach caused substantial harm to Front Sight. LVDF’s actions (or
10 lack of action) set in motion a collapse of Front Sight resulting in Front Sight’s ultimate bankruptcy
11 in which Front Sight incurred more than \$4,300,000 in legal and related fees, creditors filed more
12 than \$12,500,000 in claims against Front Sight, and the equity of Front Sight was ultimately
13 acquired by a new owner.

14 Notwithstanding the devastating effects of LVDF’s failure to fund the loan it promised,
15 LVDF has brazenly held out its hands seeking to collect more than \$12,682,000, *representing*
16 *nearly 2x the principal advanced (again, less than 87% of the promised Commitment)*², as if it did
17 nothing wrong. Front Sight, rightfully astounded, has sought to uncover why its lender, on which
18 Front Sight relied to build the Project, contends it is entitled to a full recovery on any funds
19 advanced under the CLA despite its complete failure to perform under the CLA. To date, the only
20 explanation LVDF has provided is that it was only obligated to use its “best efforts” to obtain funds
21 from EB-5 investors, LVDF failed to obtain the funds despite its best efforts, and that, despite not
22 being provided the funds sufficient to complete the Project, Front Sight breached the CLA by
23 failing to provide information sufficient for LVDF to assist its EB-5 investors in completing their

24 _____
25 ¹ Capitalized terms not otherwise defined in this Introduction shall have those meanings ascribed to them in the remainder of the Opposition.

26 ² The CLA defines as the “Commitment,” “an amount not to exceed seventy five million dollars (\$75,000,000). Such
27 Commitment shall be reduced by any principal payments made by or on behalf of Borrower or any principal reductions
28 otherwise required under and pursuant to the Loan Documents.” See CLA, p.3. The “Commitment” was later reduced to \$50,000,000.

1 immigration approvals. Front Sight has sought, and is rightfully entitled to, discovery on these
2 positions.

3 LVDF seeks to evade these appropriate areas for discovery based solely on prepetition
4 protective orders entered by the Nevada state court more than two years before the filing of the
5 Amended Claim in connection with a different action then pending in a different court. Certainly,
6 while Fed. R. Bank P. 9027(i) provides that orders entered by a state court in an action
7 subsequently removed to federal court remain in full force and effect until dissolved or modified,
8 that section does not further provide that such orders shall also prospectively affect future
9 exclusively federal proceedings solely because the two matters share common issues of fact or
10 law. Despite this, LVDF asks this Court to extend the provisions of the State Court Protective
11 Orders beyond the removed action to encompass Front Sight's Amended Claim Objection. LVDF
12 does so even though the state court did not exercise, and could not have exercised, jurisdiction
13 over the Amended Claim Objection since it arises exclusively under federal law. Thus, LVDF
14 essentially asks this Court to retroactively cede a measure of federal jurisdiction over the claims
15 resolution process to the state court. The Court cannot do so as a matter of law and should therefore
16 deny the Motion in its entirety.

17 **II.**
18 **FACTUAL BACKGROUND**

19 **A. The State Court Action.**

20 1. On September 14, 2018, Front Sight commenced a civil action in the Eighth Judicial
21 District Court Clark County, State of Nevada (the "State Court") entitled *Front Sight Management,*
22 *LLC v. Las Vegas Development Fund LLC, et al.*, Case No. A-18-781084-B (the "State Court
23 Action") seeking primarily to stop LVDF's wrongful attempts to foreclose on its real property. *See*
24 *AECF*³ No. 1. LVDF countersued against Front Sight.

25 2. The operative pleadings in the State Court Action were (1) *Plaintiff's Second*
26 *Amended Complaint* (the "Complaint") filed by Front Sight and (2) *Defendants' Answer to*

27 _____
28 ³ "AECF" refers to the electronic court filing number in the Adversary Proceeding.

1 *Plaintiff's Second Amended Complaint; and First Amended Counterclaim* (the "Counterclaim")
2 filed by LVDF. *See id.*

3 3. The Counterclaim, as against Front Sight, consisted of the following claims: fraud,
4 fraudulent transfers, conversion, civil conspiracy, judicial foreclosure, and waste. LVDF did not
5 pursue a breach of contract claim. *See id.*

6 4. During the State Court Action, relevant to this Motion, the State Court entered
7 certain protective orders based on various motions filed by the parties as follows:

8 a. As it related to discovery of the identities and the investment information of the EB-5
9 investors (the "Investor Information"), on June 30, 2020, the State Court entered a
10 limited protective order finding that "the Investors' identities and investment
11 information are not germane to the claims and defenses in this case" (the "June 2020
12 Protective Order").⁴ *See* Motion, at Ex. 4.

13 b. As it related to the requests for information related to LVDF's foreign placement
14 consultants (the "Consultants"), the June 2020 Protective Order provided: "Limited
15 information concerning the [] Consultants is relevant to Front Sight's fraud claims.
16 Specifically, the Court finds the nature, history, and extent of the EB5 Parties' prior
17 relationship with the Foreign Placement Consultants is relevant to Front Sight's claims
18 that the EB5 Parties' misrepresented that it had a network of relationships for
19 potentially sourcing EB-5 investors. Consequently, notwithstanding the potential
20 privilege and confidentiality concerns, the Court will allow limited discovery
21 concerning the identities of the EB5 Parties' Foreign Placement Consultants, the prior
22 work these consultants performed on behalf of the EB5 Parties, the timing of the
23 formation of those business relationships, and the degree of success those Foreign
24 Placement Consultants achieved for the EB5 Parties in prior work." *See id.*

25 c. As it related to the requests for LVDF and its affiliates' use of funds, on July 10, 2020,
26 the State Court issued a second limited protective order (the "July 2020 Protective
27 Order" and with the June 2020 Protective Order, the "State Court Protective Orders")
28 finding that "with the exception of EB5 Impact Advisors, LLC, the EB5 Parties' private,
financial information is not relevant to Front Sight's fraudulent misrepresentation and breach of contract claims. *See* Motion, at Ex. 11.

5. As to the Investor Information addressed in the June 2020 Order, on April 22,
2021, the State Court entered a subsequent order that that, among other things, permitted disclosure
of the Investor Information, including the identities and contact information of the EB-5 investors.

⁴ LVDF also refers to a January 25, 2021 Protective Order and March 29, 2022 Protective Order, but those orders were limited to affirming the June 2020 Protective Order.

1 See AECF No. 22, pp. 138-151.

2 **B. The Bankruptcy Case and Removal of the State Court Action.**

3 6. On May 24, 2022, now with an imminent threat of an improper foreclosure by
4 LVDF, Front Sight filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code
5 in this Court thereby commencing the above-captioned case (the “Chapter 11 Case”). See ECF 1.

6 7. On June 23, 2022, Front Sight filed *Plaintiff’s Notice of Removal to United States*
7 *Bankruptcy Court of Litigation Pending in the District Court of Clark County, Nevada*. See ECF
8 176.

9 8. As a result, the State Court Action was removed to this Court and assigned
10 adversary proceeding number 22-01116-abl (the “Adversary Proceeding”).

11 9. On September 9, 2022, this Court issued an oral ruling in connection with a request
12 by LVDF to remand the Adversary Proceeding, in which the Court held “LVDF’s pending claims
13 in the state court lawsuit at the time of removal, our [sic] property, of the bankruptcy estate, as
14 debtor-in-possession.” See AECF No. 141-2, *Id.* p. 23:14-22

15 10. The estate claims were subsequently transferred and released as part of the
16 confirmation of Front Sight’s Plan of Reorganization (the “Plan”). As a result, the only claims
17 that remain pending in the Adversary Proceeding as between LVDF and Front Sight are Front
18 Sights affirmative claims against LVDF for fraud/intentional misrepresentation/concealment,
19 conversion, civil conspiracy, breach of contract, contractual breach of the implied covenant of
20 good faith and fair dealings, and intentional interference with prospective economic advantage.
21 See AECF No. 132, pp. 2-3.

22 **C. The LVDF Claim and Claim Objection.**

23 11. On August 11, 2022, LVDF filed a proof of claim in the Chapter 11 Case asserting
24 a secured claim for “Money Loaned,” and attached only the deeds of trust associated with the
25 CLA. See Claim No. 284.

26 12. On September 29, 2022, Front Sight filed its *Objection to Claim of Las Vegas*
27 *Development Fund, LLC*. See ECF No. 393.

28 13. On November 29, 2022, this Court confirmed Front Sight’s Plan and consistent

1 therewith, Front Sight, now the Reorganized Debtor, is pursuing the objection to LVDF’s claim.
2 See ECF No. 556

3 14. On December 23, 2022, Front Sight and LVDF filed a *Stipulated Scheduling Order*
4 *and Briefing Schedule Regarding LVDF Claim No. 284 and Remaining Adversary* (the
5 “Stipulation”) which was subsequently approved by the Court’s *Order Approving Stipulated*
6 *Scheduling Order and Briefing Schedule Regarding LVDF Claim No. 284 and Remaining*
7 *Adversary Claims* (the “Scheduling Order”). See ECF Nos. 621, 651; AECF Nos. 132, 137.

8 15. Among other things, the Scheduling Order set December 23, 2022 as the deadline
9 for LVDF to file an amended proof of claim, with limitations, and December 30, 2022 for Front
10 Sight to file an amended claim objection.

11 16. On December 23, 2022, LVDF filed an amended proof of claim in the amount of
12 \$12,682,008.55 (the “Amended Claim”). See Claims Reg. 284. Again, the claim is for “Money
13 Loaned.”⁵

14 17. On December 30, 2022, Front Sight filed its *Amended Objection to Claim No. 284*
15 *Filed by Las Vegas Development Fund, LLC* (the “Amended Claim Objection”). See ECF 628.

16 18. It bears emphasis that while the Scheduling Order provides for a common discovery
17 schedule for the Adversary Proceeding and Amended Claim Objection, it does not purport to affect
18 the joinder or consolidation of those two actions. To the contrary, in establishing the scope of
19 discovery, the Scheduling Order recognizes that the Adversary Proceeding and Amended Claim
20 Objection are distinct and separate matters:

21 **Scope of Discovery:** The Parties shall be permitted to conduct discovery in
22 the Adversary Proceeding and on the Amended Claim Objection.

23 19. LVDF itself recognized this distinction when it filed the Stipulation in both the
24 main Chapter 11 Case and the Adversary Proceeding. See ECF 621, see also AECF 132.

25 **D. The Motion for Protective Order.**

26 20. At issue in the Amended Claim Objection is whether LVDF, which filed its

27 ⁵ LVDF also sought to add a fraud claim. This Court currently has under submissions LVDF’s request to amend its
28 claim to add new claims. See ECF No. 735.

1 Amended Claim solely on the basis of “Money Loaned” and solely supported by the CLA (the
2 only agreement between LVDF and Front Sight) and related loan documents, is entitled to collect
3 any amounts, much less more than double the amount of principal, when LVDF failed to advance
4 even a fraction of the Commitment.

5 21. In connection with the Amended Claim Objection, Front Sight has served the
6 following discovery:

7 (b) *Front Sight Management LLC’s First Set of Interrogatories*;

8 (c) *Front Sight Management LLC’s First Set of Requests for Production of Documents*
9 (collectively, the “Written Discovery”);

10 (d) *Notice of Deposition of the FRCP 30(b)(6) Designee of Las Vegas Development*
11 *Fund, LLC* (the “30(b)(6) Deposition Notice”) [ECF No. 731];

12 (e) *Notice of Deposition of Simone Williams Esq.* [ECF No. 732]; and

13 (f) *Notice of Deposition of Robert Dzibula* [ECF No. 733].

14 (collectively, the “Front Sight Discovery”).

15 22. LVDF has objected to the Front Sight Discovery with respect to the Investor
16 Information,⁶ payments to Consultants, and information related to LVDF and its affiliates’ use of
17 EB-5 funds and funds received from Front Sight in connection with the loan. Those objections
18 culminated in the filing of the instant Motion seeking to prevent Front Sight from obtaining
19 information related to the Amended Claim Objection on the basis that the State Court Protective
20 Orders prevent discovery of the requested information.

21 23. On March 9, 2023, just three days after filing the Motion, LVDF filed its *Notice of*
22 *Partial Withdrawal of Las Vegas Development Fund, LLC’s Motion for Limited Protective Order*
23 in which LVDF withdrew its request as to those topics related to the Investor Information and
24 certain of the information in connection with LVDF’s use of the loan funds on the basis that
25 discovery of such information was not, in fact, prohibited by the State Court Protective Orders.
26 *See* ECF 745.

27 _____
28 ⁶ LVDF also seeks a protective order as to the investors’ private banking information, which is an area of inquiry that Front Sight has made clear it never intended to pursue

III.
LEGAL ARGUMENT

A. The Scope of the Motion Following the Withdrawal Notice.

LVDF has objected, for months, to discovery related to Investor Information on the basis that the State Court Protective Orders prohibited discovery on the topic. LVDF, after meet and confers, then filed an accusatory Motion containing pages and pages of allegations against Front Sight that contended that Front Sight sought the Investor Information “solely as a means of harassment.” *See* Motion, pp. 3, 4, 6, 18. LVDF has now conceded that the majority of its Motion, which was premised on the June 2020 Protective Order related to Investor Information, is no longer applicable because the April 2021 Order amended the protective order due to LVDF’s own waiver. Thus, while the Motion pleads with this Court to issue a new protective order because “Front Sight seeks the information to harass [the Investors] and to contravene the Protective Orders...,”⁷ the improper accusations have now been proven false given that Front Sight has been in possession of the investor names and contact information for years and no harassment has occurred.

In any event, the Motion and subsequent Withdrawal Notice has created some confusion as to the remaining scope of the Motion. As Front Sight understands it, the Motion now seeks a protective order relating to the following topics (identified by the topic numbers contained in the 30(B)(6) Deposition Notice):

- (a) Topic No. 10: All payments made by LVDF to foreign placement agents (the “Foreign Placement Payments”).
- (b) Topic No. 6 and 7: How LVDF spent EB-5 funds that were held back under the CLA;
- (c) Topic No. 11 and 38: LVDF’s receipt and use of Interest Payments;⁸
- (d) Topic No. 42: LVDF and its affiliated entities and principals receipt of any funds from EB-5 Investors, including use of those funds (Topic Nos. 6, 7, 11, 38, and 42, collectively referred to as the “Use of Funds”).

⁷ *See* Motion, p. 18, ll. 4-5.

⁸ The Motion initially sought a protective order as to the use of \$281,000 Front Sight paid to LVDF for marketing between November 2017 and July 2018, but Front Sight understands that area of inquiry has been removed from the Motion through the Withdrawal Notice.

1 **B. The State Court Protective Orders Do Not Apply to the Amended Claim Objection.**

2 As its sole argument, LVDF contends that the State Court Protective Orders prohibit the
3 Front Sight Discovery with respect to the Amended Claim Objection. To be sure, there is no
4 analysis contained in the Motion to address any contention that the information sought is not
5 relevant to the Amended Claim Objection. Instead, LVDF argues that discovery as to the Amended
6 Claim Objection must be limited simply because both the Adversary Proceeding and the Amended
7 Claim Objection are being adjudicated in tandem. However, the Adversary Proceeding and the
8 Claim Objection remain separate proceedings, with different procedural histories, and different
9 theories of recovery (most glaring, the State Court Action did not contain a breach of contract
10 claim and the Amended Claim is based entirely on a breach of contract claim).

11 1. **The State Court Does Not Have Jurisdiction to Limit Discovery in Connection
12 with a Bankruptcy Claim.**

13 The State Court previously had jurisdiction over the State Court Action when it issued the
14 State Court Protective Orders. Front Sight does not dispute that those orders followed that
15 proceeding upon removal and remain in force in connection with the Adversary Proceeding.
16 Certainly, when an action is removed from a state court to a district court, “All injunctions, orders,
17 and other proceedings had in such action prior to its removal shall remain in full force and effect
18 until dissolved or modified by the district court.” Fed. R. Bank. P. 9027(i). Implicit in this
19 provision is a recognition that prior to removal of an action, the state court had jurisdiction over
20 that matter and authority to enter injunctions, orders and similar mandates which the district court
21 must generally honor. *See Wichita Royalty Co. v. City Nat'l Bank*, 95 F.2d 671, 673 (5th Cir. 1938)
22 (upon removal, a federal court takes the case in the condition it was when the state court was
23 deprived of its jurisdiction); *Savell v. Southern Ry. Co.*, 93 F.2d 377, 379 (5th Cir. 1937) (“When
24 a case is removed the federal court takes it as though everything done in the state court had in fact
25 been done in the federal court”) (quoted by *Jenkins v. Commonwealth Land Title Ins. Co.*, 95 F.3d
26 791, 795 (9th Cir. 1996)); *Nasso v. Seagal*, 263 F. Supp. 2d 596, 609 (E.D.N.Y. 2003) (“removal
27 divested the state court of jurisdiction to conduct further proceedings”). Thus, when the State
28 Court Action was removed to this Court, the State Court Protective Orders followed and remained

1 “in full force and effect” with respect to the Adversary Proceeding. *Hee Ok Jung v. Chung Hee*
2 *Kim (In re Tae Woon Kim)*, Nos. 2:15-bk-13630-RK, 2:15-ap-01263-RK, 2016 Bankr. LEXIS
3 1099, at *6 (Bankr. C.D. Cal. Apr. 6, 2016) (upon removal “all existing orders—including rulings
4 on discovery and extensions of time to plead—remain in effect until modified by the federal court”
5 (quoting 1 Wagstaffe, Rutter Group Practice Guide: Federal Civil Procedure Before Trial, ¶ 2:3528
6 at 2D-185 (2016)).

7 However, LVDF did not seek to proceed on claims within the Adversary Proceeding as
8 part of its initial or Amended Claim. Indeed, this Court already found the claims therein (as
9 previously asserted by LVDF) were property of the estate and those claims have been addressed
10 through confirmation the Plan. Instead, LVDF chose to separately file the Amended Claim, and it
11 was filed on December 23, 2022, years after the State Court Protective Orders. The Amended
12 Claim seeks recovery of funds based on “Money Loaned” and relied solely on the CLA and related
13 loan documents. The Amended Claim is different from the Adversary Proceeding which, even if
14 the claims had not been determined to be estate property, was based only on the following claims:
15 fraud, fraudulent transfers, conversion, civil conspiracy, judicial foreclosure, and waste.

16 *LVDF did not file a claim for breach of contract in the State Court Action.* LVDF did,
17 however, assert a claim for recovery under the CLA in the Amended Claim. The claims are
18 different. The burdens are different. The standards are different. The facts that this Court needs to
19 consider to determine whether relief is warranted are different.

20 Furthermore, as LVDF filed the Amended Claim in this Court, and the Amended Claim
21 Objection has only ever been pending in this Court, the State Court obviously never had
22 jurisdiction over the Amended Claim Objection and could not have issued orders that would affect
23 a then-unknown future federal proceeding. Unlike the State Court Action, the Amended Claim
24 Objection arose solely within and as a result of Front Sight’s Chapter 11 Case and is strictly a
25 creature of federal law. *See* 11 U.S.C. § 502(a) (proof of claim evidenced by timely filed proof of
26 claim allowed unless objected to by a party in interest); 28 U.S.C. § 157(b)(2)(B) (core proceedings
27 include “allowance or disallowance of claims against the estate”); Fed. R. Bankr. P. 3007
28 (governing the procedures for claims objections); *Logan v. Credit Gen. Ins. Co. (In re PRS Ins.*

1 *Group*), 331 B.R. 580, 586 (Bankr. D. Del. 2005) (“When a creditor files a proof of claim, it
2 subjects itself to the jurisdiction of the bankruptcy court to hear all matters related to the allowance
3 of that claim”); *Canal Corp. v. Finnman (In re Johnson)*, 960 F.2d 396, 404 (4th Cir. 1992)
4 (“[E]ven though the existence of a claim is controlled by state law, the allowance or disallowance
5 of a claim in bankruptcy is a matter of federal law left to the bankruptcy court's exercise of its
6 equitable powers”). Thus, unlike with respect to the Adversary Proceeding, the State Court never
7 had jurisdiction over the Amended Claim Objection and thus never had the opportunity or
8 authority to enter orders circumscribing discovery in that matter.

9 **2. The Adversary Action and Amended Claim Objection Are Not the**
10 **Same Action and Have Not Been Substantively Consolidated.**

11 Unable to cite to any authority for the proposition that a protective order issued by a state
12 court in an action subsequently removed to federal court is sufficient on its own to limit discovery
13 in a later federal proceedings filed by the same party, LVDF instead attempts to elide the Adversary
14 Proceeding and Amended Claim Objection into a single matter. For example, LVDF states, “The
15 Protective Orders became orders of this Court upon removal.” *See* Motion at 13:27-13.28. As
16 noted, the State Court Protective Orders are orders of the Court with respect to the Adversary
17 Proceeding only, not the Amended Claim Objection. Moreover, just as joint administration does
18 not create a consolidated estate, the mere fact that the Adversary Proceeding and Claim Objection
19 are being considered in tandem for trial does not create a single matter. That the two matters are
20 being considered at the same time is simply a matter of judicial economy.

21 Similarly, LVDF’s claim that permitting discovery of certain matters in connection with
22 the Amended Claim Objection, but prohibiting it in the Adversary Proceeding, presents a potential
23 evidentiary issue is likewise unavailing. Contrary to LVDF’s suggestion, there is no rule that
24 discovery properly taken in one action may not be used in another especially where the facts in the
25 two actions overlap. *See Trans Pac. Ins. Co. v. Trans-Pac. Ins. Co.*, 136 F.R.D. 385, 391 (E.D. Pa.
26 1991) (denying request for protective order with respect to discovery taken in another matter as a
27 party may make any lawful use of information rightfully gathered during discovery). Conversely,
28 there can be no argument that discovery limited in one action forever bars discovery in a different

1 action, especially when the parties may be the same, but the claims are not.

2 Finally, to extent that LVDF asserts that permitting discovery in connection with the
3 Amended Claim Objection of matters that would not be discoverable in the Adversary Proceeding
4 is somehow inequitable, LVDF is not without remedies. Rather than attempting to extend the
5 scope of Fed. R. Bank. P. 9027(i) well beyond the text of the rule, LVDF could have filed a motion
6 showing why it is entitled to a protective order under Fed. R. Civ. P. 26(c). It did not because, as
7 set forth below, the information sought is relevant and LVDF is no doubt aware that it would not
8 have been unable to meet its burden to obtain such a protective order given the claims at issue.

9 **C. Discovery Regarding the Consultants and LVDF's Use of EB-5 and Loan Funds Is**
10 **Relevant to the Amended Claim Objection.**

11 Fed. R. Civ. P. 26, which is incorporated by reference in Bankruptcy Rule 7026, permits a
12 party to seek “discovery regarding any matter, not privileged, that is relevant to the claim or
13 defense of any party....” FED. R. CIV. P. 26. Fed. R. Civ. P. 26 is to be accorded a broad and
14 liberal treatment by the courts (*Hickman v. Taylor*, 329 U.S. 495 (1947)) because “wide access to
15 relevant facts serves the integrity and fairness of the judicial process by promoting the search for
16 the truth.” *Epstein v. MCA, Inc.*, 54 F.3d 1422, 1423 (9th Cir. 1995) (*citing Shoen v. Shoen*, 5 F.3d
17 1289, 1292 (9th Cir. 1993)). As a result, “discovery should be allowed unless the information
18 sought has no conceivable bearing on the case.” *Jackson v. Montgomery Ward & Co., Inc.*, 173
19 F.R.D. 524, 528 (D. Nev. 1997).

20 “In light of the fact that Rule 26 affords liberal discovery, it follows that the party resisting
21 discovery carries a heavy burden of showing why discovery should be denied.” *Partner Weekly*,
22 2014 U.S. Dist. LEXIS 54401, at *2 (*citing Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th
23 Cir. 1975)). The objecting party must show that the discovery sought is overly broad, unduly
24 burdensome, or irrelevant.” *Id.* (*citing* FED. R. CIV. P. 26(b)(2)(C), 26(c)). “To meet this burden,
25 the objecting party must specifically detail the reasons why each request is improper.” *Id.* (*citing*
26 *Walker v. Lakewood Condo. Owners Ass’n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999)).

27 Here, LVDF presents no analysis as to why the information sought through the Front Sight
28 Discovery, as it relates to LVDF's payments to Consultants or LVDF and its affiliates' use of EB-

1 5 Funds and loan payments, are not relevant. Instead, LVDF simply concludes that the information
2 is not relevant because the State Court Protective Orders limited discovery. Thus, *at most*, LVDF
3 merely refers back to the State Court's findings that the information, as it related to the State Court
4 Case, was not relevant. This is insufficient for LVDF to meet its burden to obtain a protective
5 order with respect to the Amended Claim Objection, especially given that the State Court did not,
6 because it could not, opine as to the relevance of the requested information in connection with the
7 Amended Claim Objection.

8 Moreover, the sole remaining State Court Protective Order at issue, the July 2020
9 Protective Order, did not analyze the relevance of the information sought in connection with
10 LVDF's claims *at all*. Instead, the July 2020 Protective Order simply provided:

11 [W]ith the exception of the EB5 Impact Advisors, LLC, the EB5
12 Parties' private, financial information is not relevant to *Front Sight's*
fraudulent misrepresentation and breach of contract claims.

13 *See* Motion, p. 13, ll. 14-18 (emphasis added). Front Sight is not seeking the information in
14 connection with Front Sight's fraudulent misrepresentation and breach of contract claims. Front
15 Sight is seeking discovery on the Amended Claim that LVDF filed against Front Sight.

16 **1. LVDF's Payments to the Consultants Is Relevant.**

17 As a preliminary matter, Front Sight is not aware of any State Court Protective Order that
18 actually prohibits Front Sight from seeking information on payments to the Consultants. Instead,
19 the June 20, 2020 Protective Order provided

20 However, limited information concerning the Foreign Placement Consultants is
21 relevant to Front Sight's fraud claims. Specifically, the Court finds the nature,
22 history, and extent of the EB5 Parties' prior relationship with the Foreign Placement
23 Consultants is relevant to Front Sight's claims that the EB5 Parties' misrepresented
24 that it had a network of relationships for potentially sourcing EB-5 investors.
25 Consequently, notwithstanding the potential privilege and confidentiality concerns,
26 the Court will allow limited discovery concerning the identities of the EB5 Parties'
Foreign Placement Consultants, the prior work these consultants performed on
behalf of the EB5 Parties, the timing of the formation of those business
relationships, and the degree of success those Foreign Placement Consultants
achieved for the EB5 Parties in prior work.

1 Thus, aside from being relevant, the information sought has not been previously restricted so there
2 is no basis to prevent discovery based on LVDF's blanket assertion that the State Court Protective
3 Orders prevent discovery. Even if the State Court Protective Orders were applicable to the
4 Amended Claim Objection (they are not), there is no State Court Protective Order preventing
5 discovery regarding payments to Consultants.

6 Furthermore, LVDF has advanced an argument that, despite that that CLA unambiguously
7 defines a Commitment to loan \$75,000,000, later reduced to \$50,000,000, that LVDF was only
8 required to use its "best efforts" to obtain EB-5 funds in order to fund the Commitment in the CLA.
9 One way that LVDF would need to show it used its best efforts would be to show what, if anything,
10 it paid its Consultants in order to raise the necessary funds. Indeed, even LVDF, through Mr.
11 Dzibula, contends that:

12 any EB-5 raise is contingent on foreign investors deciding to invest in a particular
13 project over all other possible EB-5 projects looking for foreign investors, in my
14 experience

14 See Amended Claim, Dzibula Decl. ¶ 11. What, then, did LVDF do to make foreign investors
15 decide to invest in the Project over all other possible EB-5 projects looking for foreign investors?

16 It has been Front Sight's position since the initial Debtor Objection that LVDF did little
17 more than retain the Consultants to market the project. Whether, how, and how much those
18 Consultants were compensated (including from both the marketing funds paid directly by Front Sight
19 and the assets of LVDF, *i.e.*, the interest payments totaling \$1,870,851 over the course of the loan)
20 is directly relevant to the issues in the Amended Claim Objection.

21 Similarly, LVDF has taken the position that "one of the factors that seriously impacted
22 LVDF's ability to obtain EB-5 funds was Front Sight's failure to pay agreed upon costs under the
23 Engagement Letter in a timely fashion and Front Sight's repeated attempts to sidestep its obligation
24 to pay for marketing expenses." See Dzibula Decl. ¶ 24. While Front Sight disputes that it failed
25 to pay agreed upon costs and otherwise sidestepped its obligation, LVDF certainly cannot prevent
26 Front Sight's discovery into what the Consultants were demanding, being paid, or not being paid.
27 In sum, LVDF cannot put the payment of marketing and other funds for Consultants at issue and
28

1 then prevent discovery thereon.

2 2. **LVDF's Use of the EB-5 Funds and Front Sight's Payments is Relevant.**

3 LVDF contends that its only source of funding for the CLA was the funds obtained from
4 EB-5 Investors, and that the use of such funds is limited. Specifically, in its opposition (the "Claim
5 Opposition") to the Amended Claim Objection, LVDF contends: "EB-5 loans require a borrower
6 to be transparent and allow the lender, and ultimately the government, to see how loan proceeds
7 are being invested to create jobs." *See* ECF No. 667, p. 3, ll. 24. LVDF contends it had fifteen
8 EB-5 investors (135 less than it initially promised), which totals \$7,500,000 in funding. Only
9 \$6,375,000 was advanced to LVDF. If the remaining \$1,125,000 was spent on things other than
10 the lending to Front Sight, and thus not available for the loan required under the CLA, that is
11 certainly something Front Sight and this Court should know.

12 Shockingly, however, LVDF now claims that if it or its affiliates received any of the EB-5
13 Funds earmarked for the Project, or has used the funds from any purpose other than the Project,
14 than that information is not relevant. It is certainly relevant. First, LVDF claims that Front Sight
15 failed to provide information sufficient for the U.S. Citizenship and Immigration Services
16 ("USCIS") with respect to the Investors immigration information. However, if LVDF and its
17 affiliates have misused funds earmarked for the Project, the fault for any concerns raised by USCIS
18 (if any) in connection with the Investor applications falls on LVDF and its affiliates, not Front
19 Sight. It is inexplicable that LVDF would seek a protective order for discovery that "would require
20 disclosure of how LVDF spent EB-5 funds that were held back under the CLA" given LVDF's
21 simultaneous position that the only source of funds for the CLA were EB-5 funds and it was merely
22 tasked with raising those funds for the sole purpose of lending them to Front Sight.

23 Furthermore, as this Court already recognized within the first days of the Chapter 11 Case:

24 Although the parties had differing views on why that lending
25 relationship soured, the following things did occur in connection
26 with the LVDF loan. On July 1 of 2017, just nine months after the
27 original papers memorializing the LVDF loan was signed, a first
28 amendment to the LVDF loan documents was executed by Front
Sight and delivered to LVDF, which, among other things, reduced
the maximum loan amount from \$75 million. And on February 28th
of 2018, about 8 months later, Front Sight executed and delivered a

1 second amendment to the LVDF loan documents, quote, “to allow
2 time for Front Sight to obtain a senior debt,” closed quote. So LVDF
3 had loaned -- agreed to loan 75 million, reduced it to 50 million, and
4 now was looking for -- to provide time to Front Sight to find senior
5 debt. Apparently, they made the \$75 million loan, *and whatever*
6 *commissions they might have made in connection with their loan*
7 *origination fees, they might have made in connection with that and*
8 *then quickly wanted to exit stage left is what the docket* -- or
9 documents show

10 *See* ECF No. 229 (oral ruling on Debtor’s motion for approval of debtor-in-possession financing),
11 p. 29, l. 15 – p. 30, l. 10 (emphasis added). Front Sight remains rightfully concerned that it may
12 have been more than just commissions or origination fees that LVDF was after. How LVDF
13 utilized the \$1,125,000 in EB-5 funds it retained (instead of loaning those funds to Front Sight),
14 and how LVDF utilized the interest payments that one would think would be used in connection
15 with LVDF’s purported business, *i.e.*, loaning funds to Front Sight, is now directly at issue through
16 the Amended Claim filed by LVDF. Discovery related thereto is appropriate.

17 Moreover, as set forth in the Amended Claim Objection, Front Sight has asserted that
18 LVDF is seeking duplicative recovery and punitive damages by seeking recovery of amounts that
19 do not serve to compensate LVDF but, instead, serve only to penalize Front Sight. Specifically,
20 the Amended Claim Objection sets forth in detail that, in order to be permitted default fees and
21 costs, they must actually compensate for some damage of the lender in order to not be punitive.
22 *See* Amended Claim Objection, pp. 16-18. In its Claim Opposition, LVDF offered no evidence, or
23 even argument that the more the \$6,307,000 it seeks in addition to the principal advanced are tied
24 to any actual damage. LVDF has now apparently doubled down by seeking to prevent any
25 discovery as to how the more than \$1,870,850 in interest payments received by LVDF were
26 utilized. Again, LVDF has put its use of payments directly at issue, but seeks to hide behind its
27 unsupported assertions. Front Sight is entitled to discovery on how LVDF utilized the interest
28 payments and other amounts it did receive as such information is relevant to the Amended Claim
Objection.

...

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

IV.
CONCLUSION

LVDF has failed to meet its burden that a protective order is warranted or necessary in this case. Therefore, Front Sight respectfully requests that the Court enter an order denying the Motion and permitting Front Sight to proceed with discovery requested through the Front Sight Discovery on the topics set forth herein.

DATED this 16th day of March, 2023.

GARMAN TURNER GORDON LLP

By: /s/ Teresa Pilatowicz
GREGORY E. GARMAN, ESQ.
TALITHA GRAY KOZLOWSKI, ESQ.
TERESA M. PILATOWICZ, ESQ.
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
*Attorneys for Attorneys for Reorganized
Debtor Front Sight Management LLC*