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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

FRONT SIGHT MANAGEMENT LLC,

Debtor.

Case No. 22-11824-abl

Chapter 11

Hearing Date: July 25, 2022
Hearing Time: 9:30 a.m.

**THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS’ (1) OPPOSITION TO MOTION TO TERMINATE STAY;
AND (2) JOINDER TO DEBTOR’S OPPOSITION TO MOTION TO TERMINATE STAY**

The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its proposed undersigned counsel, hereby opposes (the “Opposition”) the *Motion to Terminate Stay* [ECF No. 206] (the “Stay Motion”) filed by secured creditor Las Vegas Development Fund LLC (“LVDF”), to permit LVDF to continue with litigation pending in the Nevada state court involving the Debtor and the purported amounts owed by the Debtor to LVDF, which include claims against the Debtor

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1 constituting property of the estate pursuant to Section 541(a).¹ For the reasons discussed herein,
2 the Committee respectfully opposes any order terminating 11 U.S.C. § 362(a) at this stage in the
3 chapter 11 case. In addition, the Committee joins in the Debtor’s *Opposition to Motion*
4 *to Terminate Stay* [ECF No. 253] (the “Opposition to Stay Motion”) and incorporates
5 the Debtor’s arguments in that opposition as though fully restated herein.

6 This Opposition is filed contemporaneously with the Committee’s *Motion to Intervene*
7 *Under Bankruptcy Rule 7024* (the “Intervention Motion”), filed in Adversary Proceeding No. 22-
8 01116-abl (the “Adversary Proceeding”) as well as the *Committee’s (1) Opposition to the Motion*
9 *to Remand, and (2) Joinder to Debtor’s Opposition to Motion to Remand* (“Opposition to
10 Remand”), and the Committee’s *Opposition to Motion to Appoint Examiner* (“Examiner
11 Opposition”). Arguments and background set forth in the Committee’s Intervention Motion,
12 Opposition to Remand, and Examiner Opposition are incorporated herein to the extent relevant to
13 this instant Motion, rather than repeated. In addition, the Debtor has filed the *Motion for Entry of*
14 *an Order Confirming Terminating Sanctions Order is Void as a Violation of the Automatic Stay or,*
15 *in the Alternative, Motion for Relief from Order Pursuant to Federal Rule of Civil Procedure*
16 *60(b)*[AECF No. 43] (the “Stay Violation Motion”). Arguments made by the Debtor in which the
17 Committee has joined are also incorporated herein to the extent relevant to the Court’s consideration
18 of the Stay Motion.

19 This Opposition is made and based upon the following Memorandum of Points and
20 Authorities, the papers and pleadings on file herein, judicial notice of which is respectfully
21 requested pursuant to Federal Rule of Evidence 201, and any argument of counsel entertained by
22 the Court at the time of the hearing on the Stay Motion.

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25 ¹ Unless otherwise indicated, all references to a “Section” or a “Chapter” are to Title 11 of the United States
26 Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”). “Bankruptcy Rule” references are to
27 the Federal Rules of Bankruptcy Procedure Rules 1001-9037. “Local Rule” references are to the Local Rules
28 of Bankruptcy Practice for the United States District Court for the District of Nevada. All references to “ECF
No.” are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear
on the docket maintained by the clerk of court. All references to “AECF No.” are to the number assigned to
the documents filed in the adversary case number 22-01116-abl.

1 Respectfully submitted this 11th day of July 2022.

2 **CARLYON CICA, CHTD**

3 By: /s/ Dawn M. Cica, Esq.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Preliminary Statement**

3 Cause does not exist to terminate the stay based on fundamental bankruptcy principles,
4 including the priority scheme set forth in the Bankruptcy Code, and the Committee’s role as “watch
5 dog” for the Court as well as a review of the relevant factors. Critically here, not only are the
6 Debtor’s claims against the Lender Parties (defined below) property of the Debtor’s estate under
7 Section 541(a), but a careful analysis of each of the counterclaims asserted against the Debtor,
8 including the amount purportedly owed to LVDF, are property of the estate and therefore all should
9 move forward in this Court.

10 The Committee was appointed to represent the interests of the body of unsecured creditors
11 of the estate and is charged with investigating the “acts, conduct, assets, liabilities, and financial
12 condition of the Debtor, the operation of the Debtor’s business and the desirability of the
13 continuance of such business, and any other matter relevant to the case or to the formulation of a
14 plan.” 11 U.S.C. § 1103(c)(2). In that capacity, the Committee will be investigating the secured
15 claim of LVDF, the counterclaims, the fees, expenses and other charges LVDF is attempting to
16 charge the Debtor and whether or not LVDF’s claims are subject to 510(c). Allowing LVDF’s
17 claims against the estate to be determined in a different forum would eliminate the Committee’s
18 role as “watch dog” for the creditor body with respect to this suit and any related allegations of
19 misconduct.

20 Furthermore, given that the Committee was formed just a few weeks ago, the Court should
21 permit the Committee to perform its role in investigating and identifying potential fraudulent
22 transfers rather than terminating the stay so that those claims can improperly be asserted by one
23 singular creditor in state court. LVDF is one of many creditors of the estate, and although it may
24 be a secured creditor, it should not be permitted to circumvent the Bankruptcy Code and this
25 Court’s jurisdiction by litigating claims that belong to the creditor body as a whole.

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1 **II. Jurisdiction and Venue**

2 1. The Court has jurisdiction over the Stay Motion pursuant to 28 U.S.C. §§ 157 and
3 1334 and Local Rule 1001(b)(1).² This matter is a core proceeding pursuant to 28 U.S.C. §
4 157(b)(2)(G)(motions to terminate, annul, or modify the automatic stay). Pursuant to Local Rules
5 7008 and 7012, the Committee consents to entry of a final order by the Bankruptcy Court.

6 2. Venue of this proceeding and this Opposition is proper in this district pursuant to
7 28 U.S.C. §§ 1408 and 1409.

8 **III. Relevant Background**

9 3. On May 24, 2022 (the "Petition Date"), the Debtor filed a voluntary petition for
10 relief under chapter 11 of the Bankruptcy Code with this Court. Since the Petition Date, the Debtor
11 has remained in possession of its assets and has continued to operate and manage its business as a
12 debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

13 5. The factual background relating to the Debtor's commencement of the Chapter 11
14 Case is set forth in detail in the *Omnibus Declaration of Ignatius Piazza in Support of First Day*
15 *Motions* [ECF No. 14] (the "First Day Declaration") filed on May 24, 2022 and incorporated herein
16 by reference.

17 6. On June 9, 2022, the Office of the United States Trustee for Region 17 appointed a
18 five-member Committee consisting of: (i) Steven M. Huen; (ii) Gary Cecchi; (iii) David Streck;
19 (iv) Thomas E. Donaghy; and (v) ALM Investments LLC.³ The Committee selected Kelley Drye
20 & Warren LLP as its proposed lead counsel and Carlyon Cica Chtd. as proposed local counsel.
21 The Committee also selected Dundon Advisers as its proposed financial advisor.

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24 ² Unless otherwise indicated, all references to a "Section" or a "Chapter" are to Title 11 of
25 the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code").
26 "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure Rules
27 1001-9037. "Local Rule" references are to the Local Rules of Bankruptcy Practice for the
28 United States District Court for the District of Nevada. All references to "ECF No." are to
the number assigned to the documents filed in the above-captioned bankruptcy case as they
appear on the docket maintained by the clerk of court. All references to "AECF No." are
to the number assigned to the documents filed in the adversary case number 22-01116-abl.

³ Docket No. 116 in Case 22-11824-ABL.

1 7. On September 14, 2018, Front Sight filed suit in the Eighth Judicial District Court,
 2 for the State of Nevada, County of Clark (the “State Court”) against LVDF, EB5 Impact Capital
 3 Regional Center, LLC, EB Impact Advisors LLC, Robert Dziubla, and Jon Fleming (collectively
 4 the “Lender Parties”) as Case No. A-18-781084-B (the “State Court Action”). See ECF No. 4, p.
 5 9-10, 1. 24-14. 11. On January 4, 2019, the Debtor filed its Second Amended Complaint against
 6 the Lender Parties.

7 8. On March 30, 2021, the Lender Parties, with permission of the State Court, filed an
 8 amended counterclaim against the Front Sight, VNV Dynasty Trust I, VNV Dynasty Trust II,
 9 Ignatius A. Piazza, II, Jennifer Piazza (collectively the “Piazza Entities”), Morales Construction,
 10 Inc., All American Concrete & Masonry, Inc., Top Rank Builders, Inc., Efrain Rene Morales-
 11 Moreno, and Michael Gene Meacher.

12 9. On June 23, 2022, the Debtor filed a notice of removal of the State Court Action as
 13 adversary number 22-01116-abl. See ECF No. 176 and AECF No. 1. LVDF has filed a Motion
 14 to Remand the State Court Action to State Court. See AECF No. 4.

15 **IV. Legal Analysis**

16 A. “Cause” Does Not Exist to Terminate the Stay Pursuant to Section 362(d)

17 Section 362(d) provides in pertinent part:

18 On request of a party in interest and after notice and a hearing, the court
 19 shall grant relief from the stay provided under subsection (a) of this section,
 such as by terminating, annulling, modifying, or conditioning such stay—

- 20 (1) for cause, including the lack of adequate protection of an interest in
 21 property of such party in interest;
- 22 (2) with respect to a stay of an act against property under subsection (a)
 of this section, if—
- 23 (A) the debtor does not have an equity in such property; and
 24 (B) such property is not necessary to an effective reorganization.

25 A bankruptcy filing imposes an automatic stay on all litigation against the debtor. 11 U.S.C. §
 26 362(a). A bankruptcy court, however, “shall” lift the automatic stay “for cause.” § 362(d)(1).
 27 “Cause” has no clear definition and is determined on a case-by-case basis, *In re MacDonald*, 755
 28 F.2d 715, 717 (9th Cir. 1985). A creditor seeking to proceed post-petition with litigation against

1 the debtor typically must request and obtain relief from the automatic stay. *Id.* Such relief is
2 granted only upon a showing of “cause.” 11 U.S.C. § 362(d)(1); *In re Conejo Enterprises, Inc.*, 96
3 F.3d at 351. However, because the Bankruptcy Code does not specify what constitutes “cause” in
4 this context, bankruptcy courts must determine whether cause exists on a case-by-case basis. *Id.*;
5 *Kronemyer v. Am. Contractors Indemn. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. BAP
6 2009). In *In re Kronemyer*, the bankruptcy court considered the factors articulated in *In re Curtis*,
7 40 B.R. 795, 799–800 (Bankr. D. Utah 1984), for the purpose of determining whether cause existed
8 to lift the stay to permit the creditor to proceed with prepetition litigation against the debtor. *In re*
9 *Kronemyer*, 405 B.R. at 921. As the *Kronemyer* court stated, “[w]e agree that the Curtis factors
10 are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the
11 automatic stay to allow pending litigation to continue in another forum.” *Id.* The *Curtis* factors
12 consist of the following twelve nonexclusive factors:

- 13 (1) Whether the relief will result in a partial or complete resolution of the issues;
- 14 (2) The lack of any connection with or interference with the bankruptcy case;
- 15 (3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 16 (4) Whether a specialized tribunal has been established to hear the particular cause of
17 action and whether that tribunal has the expertise to hear such cases;
- 18 (5) Whether the debtor’s insurance carrier has assumed full financial responsibility for
defending the litigation;
- 19 (6) Whether the action essentially involves third parties, and the debtor functions only
20 as a bailee or conduit for the goods or proceeds in question;
- 21 (7) Whether the litigation in another forum would prejudice the interests of other
creditors, the creditors' committee and other interested parties;
- 22 (8) Whether the judgment claim arising from the foreign action is subject to equitable
23 subordination under Section 510(c);
- 24 (9) Whether movant's success in the foreign proceeding would result in a judicial lien
avoidable by the debtor under Section 522(f);
- 25 (10) The interests of judicial economy and the expeditious and economical
26 determination of litigation for the parties;
- 27 (11) Whether the foreign proceedings have progressed to the point where the parties are
28 prepared for trial, and

1 (12) The impact of the stay on the parties and the “balance of hurt.”

2 *In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984). In weighing the relevant factors, the
3 bankruptcy court is not required to give equal weight to all factors. The balancing of potential
4 harm to the creditor on the one hand, and to the debtor and the bankruptcy estate on the other hand,
5 frequently is dispositive. *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, 2008
6 WL 8444797, at *6 (Mem. Dec.) (9th Cir. BAP Aug. 15, 2008) (“the bankruptcy court must
7 balance the potential hardship that will be incurred by the party seeking relief if the stay is not
8 lifted against the potential prejudice to the debtor and the bankruptcy estate”).

9 B. The Curtis Factors Weigh Against Terminating the Automatic Stay

10 Although not all of the factors apply to the instant matter, the majority of the factors reflect
11 that the stay should not be terminated.

12 (1) ***Whether relief will result in partial or complete resolution of issues.***

13 The allowance or disallowance and amount of LVDF’s claim against the estate must be
14 resolved in this Court as an integral core matter, including the fraudulent transfer claims asserted
15 by LVDF. In that regard, the Committee disagrees with LVDF’s argument that if the relief in the
16 Stay Motion is granted, “[t]he relief requested in the Nevada State Court would result in a complete
17 adjudication of the claims filed by the Debtor and against the Debtor.” While relief may eventually
18 result in partial or complete resolution of the issues, the resolution may not be immediate. The
19 State Court Action has been pending for four years, and there is no indication that the Nevada
20 Business Court was ready to resolve the issues on the merits. Given the specialized nature of
21 adjudicating secured claims in a chapter 11 case, the Committee’s role in that process, and that
22 certain claims flow through the chapter 11 process, this factor weighs in favor of denying the Stay
23 Motion.

24 (2) ***The lack of any connection with or interference with the bankruptcy.***

25 Here, the State Court Action involves Debtor’s largest asset, creditor and claim in a case
26 where the U.S. Trustee has already appointed the Committee. LVDF argues that its claim and the
27 amount have to be determined and having the State Court make those determinations would not
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1 directly interfere with this bankruptcy case. The Committee disagrees and submits this Court
 2 should make the determination on such core matters as the ones implicated in the State Court
 3 Action. Furthermore, this Court has jurisdiction to enter a final judgment on issues required to
 4 determine the allowance or disallowance of LVDF's claim, including the extent and validity of its
 5 purported lien. *See Stern v. Marshall*, 131 S. Ct. 2594, 2620-21 (2011) (holding that a bankruptcy
 6 court only lacks constitutional authority to enter a final judgment on a state law claim "that is not
 7 resolved in the process of ruling on a creditor's proof of claim."). Further, allowing the State Court
 8 Action to proceed would force the Debtor to litigate in another court and hinder its attempts to
 9 reorganize. Therefore, this factor weighs heavily against terminating the stay and is not neutral as
 10 proffered by LVDF.

11 **(3) *Whether the foreign proceeding involves the debtor as a fiduciary.***

12 This factor is not applicable.

13 **(4) *Whether a specialized tribunal has been established to hear the particular cause***
 14 ***of action and whether that tribunal has the expertise to hear such cases.***

15 Although LVDF contends that the specialized tribunal here is the Nevada Business Court,
 16 the Committee disagrees. This Court is the specialized tribunal established to determine allowance
 17 of claims against the Debtor which is essentially what the State Court Action is all about. There
 18 is no better tribunal to hear the causes of action, especially given the role the Committee plays in
 19 aiding the Court with respect to the allowance of claims. Accordingly, this factor also weighs
 20 against terminating the automatic stay.

21 **(5) *Whether the Debtor's insurance carrier has assumed full financial responsibility***
 22 ***for defending the litigation.***

22 This factor is either neutral or not applicable.

23 **(6) *Whether the action essentially involves third parties, and the debtor functions***
 24 ***only as a bailee or conduit for the goods or proceeds in question.***

25 This action involves the Debtor as the original and primary Plaintiff. The core of the
 26 dispute involves estate property and estate claims. As discussed in detail in the Debtor's
 27 Opposition to Remand, each of the counterclaims alleged by LVDF relate, at their core, to the
 28 Debtor. This factor weighs in favor of denying the Stay Motion. Once the estate claims have been

1 decided by this Court, any remaining claims that against third parties can be adjudicated at that
2 time. *See, e.g., In re Neel*, 554 B.R. 241 (Bankr. D. Or. 2016).

3 **(7) *Whether the litigation in another forum would prejudice the interests of other***
4 ***creditors, the creditors' committee and other interested parties.***

5 This factor weighs heavily in favor of denying the Stay Motion. Allowing LVDF to assert
6 its claims now, in a different forum, would be unfair to other creditors who must assert their claims
7 in this Court at a later date. The Committee was appointed in this case on June 9 and is currently
8 investigating the Debtor's assets, liabilities, and overall financial condition and business prospects.
9 The Committee is also charged with investigating potential fraudulent conveyances and such
10 causes of action belong to the estate with any recoveries benefitting the entire general unsecured
11 creditor body (as opposed to just LVDF). "A fraudulent conveyance action becomes property of
12 the estate upon the filing of a bankruptcy petition. *See In re Mark One Corp.*, 619 B.R. 423, 439
13 (Bankr. E.D. Cal. 2020) (holding that recovery on an action for 'preferences or fraudulent
14 conveyances' 'is clearly within the rights of the bankruptcy estate to recover fraudulent
15 conveyances'). "The trustee's standing to sue on behalf of the estate is exclusive; a debtor's
16 creditors cannot prosecute such claims belonging to the estate absent abandonment." *Capriati*
17 *Constr. Corp. v. SPER, Inc. (In re Capriati Constr. Corp.)*, BAP No. NV-17-1200-BHTa, 2018
18 WL 1404439, at *5 (9th Cir. BAP Mar. 20, 2018) (citing *Estate of Spiritos v. One San Bernardino*
19 *Cnty. Super. Ct.*, 443 F.3d 1172, 1175 (9th Cir. 2006)); *Koeberer v. Cal. Bank of Commerce (In*
20 *re Koeberer)*, 632 B.R. 680, 689 (B.A.P. 9th Cir. 2021).

21 **(8) *Whether the judgment claim arising from the foreign action is subject to***
22 ***equitable subordination under Section 510(c).***

23 It is too early in the case to determine whether LVDF's claims may be subject to equitable
24 subordination under Section 510(c). However, the Debtor's allegations as set forth in its complaint
25 against LVDF could establish grounds for equitable subordination. While the Committee needs
26 time to investigate the allegations against LVDF, the very real possibility that grounds for
27 equitable subordination exist militates strongly in favor of denying stay relief. This is particularly
28 true given LVDF's position that it will be able to obtain judgment on procedural grounds without
reaching the merits of the claims raised in LVDF's complaint. It would be highly improper to

1 penalize the estate and third party creditors for the Debtor's alleged failure to comply with
2 discovery allegations. This weighs in favor of denying remand.

3 **(9) *Whether movant's success in the foreign proceeding would result in a judicial***
4 ***lien avoidable by the debtor under Section 522(f).***

5 This factor is not applicable.

6 **(10) *The interests of judicial economy and the expeditious and economical***
7 ***determination of litigation for the parties.***

8 Here, the most expeditious path forward is by keeping the stay in place and letting the
9 Adversary Proceeding move forward. This is especially true as resolution of the claims may have
10 a significant impact on the Debtor's plan of reorganization and the Debtor's unsecured creditors'
11 recoveries. If this Court grants the Stay Motion, claims otherwise belonging to the Debtor's estate
12 will be litigated in State Court and not in connection with the Debtor's reorganization efforts. The
13 question in each case is whether the claim asserted is one in which the estate has an interest and is
14 therefore property of the estate from which the estate, and derivatively the creditors as an
15 undifferentiated whole, ultimately will benefit. *Barnhill v. Johnson*, 503 U.S. 393, 398 (1992); *In*
16 *re Cohen*, 300 F.3d 1097, 1104 (9th Cir. 2002). Thus, the central issue is whether, under Nevada
17 state law, LVDF could have brought the asserted claims against the counter defendants, or whether
18 the causes of action belong to Debtor's estate and the unsecured creditor body as a whole. As set
19 forth at length in the Debtor's Opposition to Remand, the counterclaims against Debtor appear to
20 all relate to fraudulent misconduct of Debtor's principal and his agents which caused harm to the
21 creditor body as a whole; therefore, such claims belong to the estate and not to LVDF or any
22 individual creditor. The is especially true of LVDF's counterclaims for fraudulent transfer,
23 intentional interference with contractual relationships, conversion, waste, and civil conspiracy. As
24 set forth in detail in the Committee's Opposition to Motion to Remand, these claims are all
25 property of the estate and not subject to pursuit by an individual creditor such as LVDF.

26 **(11) *Whether the foreign proceedings have progressed to the point where the parties***
27 ***are prepared for trial.***

28 From the Committee's review of LVDF's Stay Motion, it does not appear that the parties
are prepared for a trial although there is a "trial date" scheduled. Given that the Committee's role

1 is investigation of claims such as these, the Committee submits that this factor weighs in favor of
2 denying the Stay Motion.

3 **(12) *The impact of the stay on the parties and the “balance of hurt.”***

4 This factor also weights in favor of denying the Stay Motion. LVDF is one creditor with
5 one claim against the estate, which the Bankruptcy Court should adjudicate as a core matter. In
6 contrast, there are also general unsecured creditors of the estate who are represented by the
7 Committee and to whom the counterclaims truly belong as set forth more specifically in the
8 Debtor’s Opposition to Remand. Granting the Stay Motion would in essence mean having the
9 State Court determine core matters – the extent and scope of estate property, the allowance or
10 disallowance of a claim against the estate, the potential equitable subordination of LVDF’s claim,
11 and the counterclaims that belong to the estate – and remove the Committee from its role of
12 investigating prepetition claims and potential debtor misconduct.

13 **V. Joinder**

14 The Committee joins in the Debtor’s Opposition to Stay Motion and incorporates the
15 Debtor’s arguments in that opposition as though fully restated herein.

16 **VI. Conclusion**

17 For the reasons discussed above, the Committee respectfully requests that the Stay Motion
18 be denied.

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20 [Signature of Counsel on following page]
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1 Respectfully submitted this 11th day of July 2022.

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3 **CARLYON CICA, CHTD.**

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