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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

<p>14 In re: 15 FRONT SIGHT MANAGEMENT, LLC 16 Debtor.</p>	<p>Case No. BK-S-22-11824-ABL Chapter 11 Adversary Case No. 22-01116-ABL</p>
<p>17 FRONT SIGHT MANAGEMENT, LLC, A 18 NEVADA LIMITED LIABILITY COMPANY 19 v. 20 LAS VEGAS DEVELOPMENT FUND LLC, 21 A NEVADA LIMITED LIABILITY COMPANY, et al.</p>	

**OPPOSITION TO DEBTOR’S OBJECTION TO AND REQUEST TO STRIKE LATE-
FILED SUBSTANTIVE JOINDER TO MOTION TO REMAND AND ACCOMPANYING
24 DECLARATION OF ROBERT DZIUBLA**

26 EB5 Impact Capital Regional Center, LLC (“EB5IC”); EB5 Impact Advisors, LLC (“EB5IA”);
27 Robert W. Dziubla; Jon Fleming; and Linda Stanwood (collectively as “Third Parties”), by and through
28 their attorneys Nicole E. Lovelock, Esq. and Andrea M. Champion, Esq., of Jones Lovelock PLLC,

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1 hereby submits its Opposition to Debtor’s Objection to and Request to Strike Late-Filed Substantive
2 Joinder to Motion to Remand and Accompanying Declaration of Robert Dziubla (the “Request to
3 Strike”). This Opposition is based upon the attached points and authorities and any oral argument this
4 Court may permit.¹

5 **MEMORANDUM OF POINTS AND AUTHORITES**

6 **I. INTRODUCTION AND RELEVANT FACTS**

7 On June 27, 2022, Las Vegas Development Fund, LLC (“LVDF”) filed a Motion to Remand.
8 AECF No. 4. Seven (7) business days later, the Third Parties filed a Joinder, joining LVDF’s Motion
9 to Remand in full and expanding, only briefly, on the EB-5 program and the EB-5 issues presented
10 in the underlying litigation between Front Sight Management LLC (“Front Sight”), on the one hand,
11 and LVDF and the Third Parties, on the other hand in support of their complete joinder to LVDF’s
12 Motion to Remand. The EB-5 issues are particularly relevant to EB5IA and EB5IC who are EB-5
13 entities set up for the purpose of marketing the Front Sight Project to potential foreign EB-5 investors
14 and to serve as the regional center for the Front Sight Project, respectively. AECF No. 55. None of
15 the information provided in the Joinder was new to Debtor or its counsel.

16 The Joinder was filed in advance of Debtor’s Opposition deadline to the Motion to Remand;
17 not after. Nonetheless, Debtor now moves to strike the Joinder and the Declaration of Robert W.
18 Dziubla as untimely. AECF No. 66.

19 **II. LEGAL ARGUMENT**

20 The Third Parties’ Joinder did not provide “new argument” as Debtor contends. Nor did the
21 Third Parties’ Joinder “sandbag” the Debtor as it contends. Debtor concedes, as it must, that neither
22 the federal bankruptcy court rules nor the Local Rules provide or forbid the filing of joinders. AECF
23 No 66 at 2:12-13. Nonetheless, Creditor contends that the Third Parties’ Joinder was untimely and
24

25 _____
26 ¹ All references to “ECF No.” are to the number assigned to the documents filed in the above-captioned bankruptcy case
27 as they appear on the docket maintained by the clerk of the court. All references to “AECF No.” are to the number
28 assigned to the documents filed in the adversary case number 22-01116-abl. All references to “Section” or “§§ 101-
1532” are to the provisions of the Bankruptcy Code. All references to “FRCP” are to the Federal Rules of Civil
Procedure. All references to “FRE” are to the Federal Rules of Evidence. All references to “LR” are to the Local Rules
of Practice within the Nevada Bankruptcy Code.

1 should be stricken because the Third Parties “gave the Debtor no opportunity to oppose the new
2 evidence and arguments.” AECF No. 66.

3 Debtor’s Motion to Strike is premised on a single unpublished case—*Star Insurance*
4 *Company v. Iron Horse Tools, Inc.*, Case No. CV-16-8-BLG-SPW-TJC, 2018 WL 3079493, 2018
5 U.S. Dist. LEXIS 45660 (D. Mont. Feb. 7, 2018). But *Star Insurance Company* does not support
6 Debtor’s Request to Strike. In *Star Insurance Company*, the defendant, GE, filed a motion for
7 summary Judgment on July 14, 2017. 2018 U.S. Dist. LEXIS 45660 at * 11. On August 1, 2017,
8 approximately two weeks after the pretrial motion filing deadline had passed, Iron Horse filed a
9 Response to and Joinder in GE’s motion for summary judgment. *Id.* After the plaintiff, Star
10 Insurance, filed its Opposition to the motion for summary judgment, both GE and Iron Horse filed
11 reply briefs. *Id.* Star Insurance then filed a Motion to Strike Iron Horse’s reply (but not Iron Horse’s
12 joinder).

13 The *Star Insurance* Court looked to a Bankruptcy Case from the 9th Circuit—*In re Hujazi*,
14 2017 Bankr. LEXIS 1963, 2017 WL 3007084 (9th Cir. BAP July 14, 2017)—for guidance on when
15 joinders filed *after* oppositions were proper as the sole issue presented to the Court was whether to
16 strike Iron Horse’s reply. *Id.* at *12-13. The *In re Hujazi* case analogously addressed “joinders [that]
17 had been filed after the debtor had opposed the motions for summary judgment” and concluded that
18 only substantive joinders filed after oppositions were improper but that “me too” joinders filed even
19 after oppositions were not prejudicial. *See id.* at * 13. The *Star Insurance Company* Court then
20 went on to conclude that Iron Horse’s reply was improper because “joinder is not the proper vehicle,
21 particularly when the substantive arguments are raised for the first time after an opposition has been
22 filed.” *Id.* at 14. Put another way, the Court found that “Iron Horse’s initial joinder in GE’s Motion
23 for Summary Judgment was permissible” but “[s]ince Iron Horse chose not to file a fully briefed
24 summary judgment of its own,” the Court would not consider its “substantive reply brief.” *Id.*

25 Neither decision applies here to justify the striking of the Third Parties’ Joinder because the
26 Third Parties’ Joinder was filed *before* Debtor’s Opposition. In fact, the *Star Insurance Company*
27 case suggests that the Third Parties’ Joinder was proper and should be considered. Both cases can
28 only justify a striking of the Third Parties’ Joinder if it was filed *after* the Debtor’s Opposition (which

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1 it was not) and even then, the Third Parties’ Joinder could only be stricken if it is deemed to be a
2 substantive joinder and not a “me too” joinder. While the Court need not even analyze whether the
3 Third Parties’ Joinder is a substantive versus a “me too” joinder (because the Joinder was filed in
4 advance of Debtor’s Opposition), the reality is that it is the latter. The Third Parties’ Joinder does
5 not present any new argument. Rather, it only joins the arguments in LVDF’s Motion to Remand,
6 calling out particular arguments that are particularly relevant to the Third Parties. In addition, the
7 declaration of Robert W. Dziubla in support of the Third Parties’ Joinder only expands on the
8 complexities of the underlying litigation (as addressed in LVDF’s Motion to Remand) as it relates to
9 the EB-5 issues that are particularly relevant to the Third Parties.

10 Finally, it is not lost on the Third Parties that Debtor has filed this Motion to Strike after
11 recently providing new, substantive evidence in reply in support of its DIP financing Motion. The
12 Debtor apparently did not have an issue presenting new, substantive evidence in a reply filed in
13 support of that motion even after the other parties filed their oppositions to the Motion but here, seeks
14 to silence the Third Parties who have yet to be heard in this case. Debtor has not been prejudiced or
15 deprived of due process by the Third Parties’ Joinder as they have had an opportunity to respond to
16 the joinder and to orally argue against the joinder in court. *See In re Hujazi*, 2017 Bankr. LEXIS
17 1963 at * 18.

18 **III. CONCLUSION**

19 For the reasons stated herein, the Third Parties respectfully request that the Court should deny
20 the Debtor’s Request to Strike and consider their Joinder in support of the Motion to Remand.

21 DATED this 15th day of July 2022.

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