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16 **UNITED STATES BANKRUPTCY COURT**  
 17 **FOR THE DISTRICT OF NEVADA**

<p>18 In re:</p> <p>19 Front Sight Management LLC,</p> <p>20</p> <p>21 Debtor.</p>	<p>22 Case No. 22-11824-abl</p> <p>23 Chapter 11</p> <p>24 <b>Hearing Date:</b> July 25, 2022  <b>Hearing Time:</b> 9:30 a.m.</p>
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25 **CHAPTER 11 STATUS REPORT**

26 Front Sight Management LLC, the chapter 11 debtor and debtor in possession herein (the  
 27 “Debtor”), hereby provides this status report to the Court to prior to the omnibus hearing date on  
 28 July 25, 2022. The Debtor apologizes to the Court for the late filing, however, the Debtor’s counsel  
 was only made aware on July 20, 2022, that a dispute has arisen between the Debtor, on the one  
 hand, and Las Vegas Development Fund, LLC (“LVDF”) and Robert Dziubla, on the other hand,  
 regarding the orders entered on July 14, 2022 [ECF Nos. 260 and 261] (collectively, the “2004  
 Orders”) granting the Debtor’s *ex parte* motions for orders directing the examinations of the person  
 most knowledgeable (“PMK”) of LVDF and Mr. Dziubla pursuant to Rule 2004 of the Federal Rules  
 of Bankruptcy Procedure (“Rule 2004”). Because of the short time frame in this case and the

1 significant impact the dispute will have on the Debtor's ability to confirm its chapter 11 plan of  
2 reorganization within the time period required by the Court order approving DIP financing [ECF No.  
3 228, ¶16], the Debtor feels it is necessary for the Court to be made aware of the dispute prior to the  
4 next omnibus hearing.

5 Pursuant to the terms of the DIP financing, the Debtor must confirm a chapter 11 plan of  
6 reorganization no later than November 29, 2022 (and hopefully by October 29, 2022 in order to  
7 prevent the Debtor from having to participate in an informal marketing process); *i.e.*, in order to  
8 ensure that the Debtor is able to successfully reorganize its business (and keep its employees  
9 employed), the Debtor's plan must be confirmed by November 29, 2022. One of the largest claims  
10 in the Debtor's case is the disputed secured claim held by LVDF. As the Debtor indicated in its  
11 schedules [ECF No. 137], the Debtor disputes the amount and validity of LVDF's claim and lien. In  
12 order to ensure a timely plan confirmation process, the Debtor was planning on filing its objection to  
13 LVDF's claim by August 2, 2022 and a claim estimation motion by August 4, 2022, to have the  
14 motions heard on the next omnibus hearing date of September 1, 2022 (the next omnibus hearing  
15 date after September 1 is September 26, 2022).

16 Under the DIP financing order, the Debtor was required to file a plan by July 15, 2022, and  
17 the Debtor filed an initial plan and disclosure statement on July 15, 2022. The Debtor set the hearing  
18 on approval of its disclosure statement for September 1, 2022, and the Debtor plans on filing an  
19 amended plan by August 4, 2022 that contains "adequate information" as defined in 11 U.S.C. §  
20 1125 and that contains more detailed information on the treatment of claims. However, the Debtor  
21 needs information and documents from LVDF and Mr. Dziubla to properly assess the amount and  
22 validity of LVDF's asserted secured claim related to its objection to the LVDF claim, its claim  
23 estimation motion and its treatment of said claim in the Debtor's plan.

24 Accordingly, on July 7, 2022, the Debtor filed two *ex parte* motions for orders directing the  
25 examinations of the PMK of LVDF and Mr. Dziubla pursuant to Rule 2004 [ECF Nos. 245 and 246]  
26 (the "2004 Motions") and for the production of documents. In the 2004 Motions, the Debtor stated  
27 that the basis for the examinations is to establish the undisputed portion (if any) of LVDF's asserted  
28 claim in order for the Debtor to determine the proper treatment of the claim in the Debtor's chapter

1 11 plan of reorganization. In the LVDF 2004 Motion [ECF No. 245, 3:3-13], the Debtor identified  
2 several topics the PMK of LVDF would be expected to testify on. These topics included, among  
3 other things, the Construction Loan Agreement, any insurance policies in place with regard to the  
4 loan, any communications regarding insurance policies in place with regard to the loan, and  
5 correspondence with regulatory agencies and any third parties with regard to the loan. *Id.* The  
6 document requests pursuant to the Subpoenas included requests related to those categories as well as  
7 LVDF's ability to fund its loan obligations, LVDF's sources for funding its loan obligations,  
8 purported material defaults, if any, by the Debtor associated with the Construction Loan Agreement,  
9 alleged non-material defaults by the Debtor including the claimed harm to the investors funding  
10 LVDF. The topics are all designed to focus upon the validity of LVDF's claim, inclusive of its  
11 claimed fees, penalties, etc., which LVDF alleges has caused its claim to more than double in size,  
12 and whether LVDF was in material default of its obligations under the Construction Loan  
13 Agreement from the outset, which ties into LVDF's ability to fund and its sources for such funds.  
14 As this Court recognized, notwithstanding a promise to loan up to \$75 million,<sup>1</sup> LVDF loaned less  
15 than 10% -- an amount that was clearly insufficient to allow the Debtor to complete the construction  
16 envisioned by the Construction Loan Agreement. All of the topics go to the validity of LVDF's  
17 claim, which as noted is now almost twice the amount of money actually loaned (which, itself, was a  
18 fraction of the amount promised). The 2004 Motions also indicated that the examinations and  
19 document production would be set on no less than 14 days' notice. Neither LVDF nor Mr. Dziubla  
20 filed an opposition to the 2004 Motions or otherwise notified counsel for the Debtor that they would  
21 not be willing to comply with the 2004 Motions. On July 14, 2022, the Court entered the 2004  
22 Orders.

23 On July 15, 2022, the Debtor filed a Notice of Intent to Issue Subpoenas with the Subpoenas  
24 attached as exhibits 1 through 4 [ECF No. 274, Exhs. 1-4] (the "Subpoenas") in accordance with  
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26 <sup>1</sup> LVDF repeatedly alleges that because the Construction Loan Agreement was for an amount "up to  
27 \$75 million," LVDF could lend any amount or no amount. This is incorrect. The language is typical  
28 for a construction loan agreement in that construction loans are typically tied to performance and the  
amount spent by the borrower on the construction project. LVDF's interpretation makes the  
Construction Loan Agreement illusory because it contends it had no obligation to lend any amount.

1 Local Rule 9016(b). On the same day, the Debtor served the subpoenas on counsel for LVDF and  
2 Mr. Dziubla via email and United States mail in accordance with Local Rule 9016(a) and (b). The  
3 Subpoenas set the date for the production of documents as July 29, 2022 and the date of the oral  
4 examinations as August 1, 2022, which dates were not less than 14 days' notice in accordance with  
5 the 2004 Orders.

6 Notwithstanding that the 2004 Motions were filed on July 7, 2022 and that the topics of  
7 examination were disclosed in the LVDF 2004 Motion, on July 19, 2022, counsel for LVDF and Mr.  
8 Dziubla contacted the Debtor's counsel and requested a meet and confer regarding the Subpoenas.  
9 On July 20, 2022 at 8:00 a.m., counsel for the Debtor and LVDF held a meet and confer regarding  
10 the Subpoenas. At the meet and confer, counsel for LVDF and Mr. Dziubla represented that: (i)  
11 neither LVDF nor Mr. Dziubla would be producing any documents in response to the Subpoenas<sup>2</sup>;  
12 (ii) the Debtor, *at its own expense*, could request production of the documents already produced in  
13 the state court action from a third party vendor; (iii) neither LVDF nor Mr. Dziubla would be  
14 appearing for the examinations as Mr. Dziubla already appeared for depositions in the state court  
15 action; (iv) many of the documents sought through the Subpoenas are protected from production  
16 based on protective orders entered by the state court, notwithstanding that the documents are sought  
17 in a federal court in connection with a claim objection and plan confirmation; and (v) LVDF and Mr.  
18 Dziubla intend to file a motion to quash the Subpoenas by July 29, 2022.

19 LVDF has taken the position that given the existence of the adversary proceeding, Rule 2004  
20 examinations are not allowed. The Debtor respectfully disagrees. For one, discovery in the  
21 adversary is closed and LVDF has not suggested that they would agree to have it reopened. For  
22 another, discovery by means of a 2004 examination is more expansive than that which might be  
23 provided in an adversary proceeding. Further, unsecured creditors have both a right to participate in  
24 2004 examinations and challenge claims filed in the bankruptcy and therefore clearly have standing  
25 here, which they did not during the pre-bankruptcy litigation. Finally, the issues presented by means

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27 <sup>2</sup> The Debtor notes that LVDF filed several motions for Rule 2004 examinations of the Debtor and  
28 non-debtor related parties and of several banks [ECF Nos. 68-78] requesting documents that were  
already produced in the underlying state court action, which motions were granted by the Court  
[ECF Nos. 91-100].

1 of the 2004 examination go not specifically to the claims in the adversary but to the legitimacy of  
 2 LVDF's claim in the bankruptcy case. If the 2004 examination uncovers that LVDF did not have the  
 3 requisite funds to enter into the Construction Loan Agreement then, among other things, their claim  
 4 for default damages as part of their claim will be eliminated. Such evidence might also serve to  
 5 reduce or eliminate the principle LVDF claims it is owed. Clearly, the Debtor and unsecured  
 6 creditors are entitled to test the veracity of LVDF's claim.

7 Despite LVDF and Mr. Dziubla having notice of the Rule 2004 examinations since July 7,  
 8 2022, they waited almost two weeks to raise any issues regarding the examinations with the Debtor's  
 9 counsel. LVDF and Mr. Dziubla's actions have caused a delay in this case for at least 30 days (but  
 10 likely more), which affects the Debtor's ability to timely confirm its chapter 11 plan and it increases  
 11 the interest accruing on the DIP financing and the administrative expenses of the estate.<sup>3</sup> Because  
 12 LVDF and Mr. Dziubla have indicated that they will not comply with the 2004 Orders and the  
 13 Subpoenas issued pursuant to those orders, the Debtor will have difficulty preparing and filing a  
 14 meaningful objection to LVDF's claim by August 2, 2022, which puts timely confirmation of the  
 15 Debtor's chapter 11 plan at risk. If the Debtor is not able to timely confirm a chapter 11, it will be  
 16 forced to sell its business, likely not as a going concern, which will result in over 130 employees  
 17 being laid off. Because resolution of the Debtor's objection to LVDF's claim and the claim  
 18 estimation motion are significant issues in this case, the Debtor respectfully requests that the Court  
 19 set a briefing schedule at the omnibus July 25, 2022 hearing date regarding LVDF and Mr. Dziubla's  
 20 anticipated motion to quash and to clarify LVDF and Mr. Dziubla's duties to comply with the 2004  
 21 Orders.

22 DATED: July 20, 2022

BG Law LLP

23 By: /s/ Susan K. Seflin  
 24 Steven T. Gubner  
 25 Jason B. Komorsky  
 26 Susan K. Seflin  
 27 Jessica S. Wellington  
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 and Debtor in Possession

28 <sup>3</sup> The Debtor reserves its right to seek sanctions in the form of actual damages and attorneys' fees against LVDF and Mr. Dziubla for their failure to comply with the 2004 Orders.