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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 Debtor.</p>	<p>21 Case No. 22-11824-abl</p> <p>22 Chapter 11</p> <p>23 <b>Hearing Date:</b> September 1, 2022  <b>Hearing Time:</b> 9:30 a.m.</p>
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24 **DEBTOR’S OPPOSITION TO LVDF’S AND DZIUBLA’S MOTION TO QUASH 2004 EXAMS AND SUBPOENAS TO PRODUCE DOCUMENTS AND REQUEST FOR A PROTECTIVE ORDER**

25 Front Sight Management LLC, the chapter 11 debtor in possession herein (the “Debtor”),  
 26 hereby files its opposition (“Opposition”) to the *Motion to Quash 2004 Exams and Subpoenas to*  
 27 *Produce Documents and Request for a Protective Order* [ECF No. 309] (the “Motion”) filed by  
 28 disputed secured creditor Las Vegas Development Fund, LLC’s (“LVDF”) and its principal Robert  
 Dziubla (“Dziubla,” and together with LVDF, the “LVDF Parties”). In support of its Opposition, the  
 Debtor respectfully represents as follows:

**I. INTRODUCTION**

Because of the LVDF Parties’ refusal to produce documents and appear for an examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure (“Rule 2004”) pursuant to the Court’s orders granting the Debtor’s Rule 2004 motions [ECF Nos. 267, 268] (collectively, the

1 “2004 Orders”), this case has been delayed for at least 30 days (but likely more). This delay directly  
2 affects the Debtor’s ability to timely confirm its chapter 11 plan which increases the cost of  
3 administering this estate significantly and puts the Debtor at risk of violating the terms of its debtor-  
4 in-possession (“DIP”) financing. If the Debtor is not able to confirm a chapter 11 plan within the  
5 restrictions of its DIP financing, the Debtor will be forced to sell its business, likely not as a going  
6 concern, which would result in over 130 layoffs and members losing their memberships.

7 Pursuant to the terms of the DIP financing, the Debtor must confirm a chapter 11 plan of  
8 reorganization no later than November 29, 2022 (and hopefully by October 29, 2022 in order to  
9 prevent the Debtor from having to participate in an informal marketing process); *i.e.*, in order to  
10 ensure that the Debtor is able to successfully reorganize its business (and keep its employees  
11 employed), the order confirming the Debtor’s plan must be entered no later than November 29,  
12 2022. By far the largest claim in the Debtor’s case is the disputed secured claim held by LVDF [see,  
13 *e.g.*, Proof of Claim No. 284]. As set forth in the Debtor’s schedules [ECF No. 137] and multiple  
14 other pleadings, the Debtor disputes the amount and validity of LVDF’s claim and lien.

15 Under the final DIP financing order [ECF No. 288], the Debtor was required to file a plan by  
16 July 15, 2022, and the Debtor filed an initial plan and disclosure statement on July 15, 2022. The  
17 hearing on the Debtor’s disclosure statement is currently set for September 23, 2022, and the Debtor  
18 must file an amended disclosure statement no later than August 26, 2022, that contains “adequate  
19 information” as defined in 11 U.S.C. § 1125 and that contains more detailed information on the  
20 treatment of claims. However, the Debtor needs additional information and documents from the  
21 LVDF Parties to properly assess the amount and validity of LVDF’s asserted claim related to the  
22 Debtor’s objection to LVDF’s claim and the treatment of said claim in the Debtor’s plan.

23 Despite the LVDF Parties having notice of the Rule 2004 examinations since July 7, 2022,  
24 they waited almost two weeks to raise any issues regarding the examinations with the Debtor’s  
25 counsel. Because of the LVDF Parties’ failure to comply with the 2004 Orders and the subpoenas  
26 [ECF No. 274, Exhibits 1-4] (the “Subpoenas”) issued pursuant to those orders, the Debtor has not  
27 been able to test the bona fides of the various components of LVDF’s claim (for example, Proof of  
28 Claim No. 284 (“Claim No. 284”) fails to provide any evidence for the approximately \$5,280,706 in

1 fees, penalties and assessments LVDF seeks in addition to the principal on the loan), which puts  
2 timely confirmation of the Debtor's chapter 11 plan at risk.

3 In the Motion, the LVDF Parties argue that they should not be required to comply with the  
4 2004 Orders because: (i) the Debtor is prohibited from seeking the Rule 2004 examinations pursuant  
5 to the pending proceeding rule; (ii) the Subpoenas are subject to the protective orders [ECF No. 309,  
6 Exhibits 5, 8, 9 13] (the "Protective Orders") entered in the underlying state court action; and  
7 (iii) the Debtor did not tender the required witness fee concurrently with service of the Subpoenas.  
8 Each of these claims is without merit.

9 First, the LVDF Parties' reliance on the pending proceeding rule is misplaced because: (i) the  
10 removed action [Adv. Proc. No. 22-ap-01116-abl] (the "Removed Action") is currently stayed, and  
11 thus, the Debtor cannot seek discovery in that action; and (ii) the discovery sought pursuant to the  
12 Subpoenas is directly related to the amount and validity of LVDF's claim against the estate, which is  
13 not directly at issue in the Removed Action.

14 Second, the LVDF Parties' reliance on the Protective Orders is improper. The Protective  
15 Orders have no application here for two reasons: (i) Rule 2004 discovery is much broader than state  
16 court discovery; and (ii) the evidence sought is critical to the Debtor's ability to rebut LVDF's  
17 allegations that the Debtor breached the CLA and committed fraud. Notably, the Debtor seeks  
18 evidence going directly to (i) LVDF's pre-Construction Loan Agreement ("CLA") representations  
19 regarding its *bona fides*, (ii) LVDF's claim of experience raising funds from EB-5 investors, and (iii)  
20 how LVDF used funds received pursuant to the CLA, including, without limitation, for so-called  
21 "marketing" purposes. Each category is critical to the Debtor's objection to LVDF's claim.

22 Third, if and when, the LVDF Parties confirm their attendance at a Rule 2004 examination,  
23 the Debtor will tender the required witness fee in accordance with Rule 2004(e). The Court should  
24 deny the Motion in its entirety, and order the LVDF Parties to comply with the 2004 Orders.

## 25 **II. RELEVANT BACKGROUND**

### 26 **A. The Debtor Properly Noticed the 2004 Examinations**

27 On July 7, 2022, the Debtor filed two *ex parte* motions for orders directing the examinations  
28 of the LVDF Parties pursuant to Rule 2004 [ECF Nos. 245 and 246] (the "2004 Motions") and for

1 the production of documents. In the 2004 Motions, the Debtor stated that the basis for the  
2 examinations is to establish the undisputed portion (if any) of LVDF's asserted claim in order for the  
3 Debtor to determine the proper treatment of the claim in the Debtor's chapter 11 plan of  
4 reorganization. In the LVDF 2004 Motion [ECF No. 245, 3:3-13], the Debtor identified several  
5 topics the PMK of LVDF would be expected to testify on. These topics included, among other  
6 things, the CLA, any insurance policies in place with regard to the loan, any communications  
7 regarding insurance policies in place with regard to the loan, and correspondence with regulatory  
8 agencies and any third parties with regard to the loan. *Id.* The document requests pursuant to the  
9 Subpoenas [ECF No. 274, Exhibits 2 and 4] included requests related to those categories as well as  
10 LVDF's ability to fund its loan obligations, LVDF's sources for funding its loan obligations,  
11 purported material defaults, if any, by the Debtor associated with the CLA, alleged non-material  
12 defaults by the Debtor including the claimed harm to the investors funding LVDF.

13 The topics are all designed to focus upon the validity of LVDF's claim, inclusive of its  
14 alleged fees, penalties, etc., which LVDF asserts has caused its claim to more than double in size,  
15 and whether LVDF was in material default of its obligations under the CLA from the outset, which  
16 focuses on LVDF's ability to fund and its sources for such funds. As this Court recognized,  
17 notwithstanding a promise to loan up to \$75 million,<sup>1</sup> LVDF loaned less than 10%—an amount that  
18 was clearly insufficient to allow the Debtor to complete the construction envisioned by the CLA and,  
19 thus generate the revenues anticipated from the finished project in light of the expressed demand by  
20 the Debtor's clientele. All of the topics go to the validity of LVDF's claim, inclusive of the over-\$5  
21 million sought by LVDF in excess of the principal on its loan. The 2004 Motions also set forth that  
22 the examinations and document production would be set on no less than 14 days' notice. The LVDF  
23 Parties did not file an opposition to the 2004 Motions or otherwise notify counsel for the Debtor that  
24 they would not be willing to comply with the 2004 Motions. Declaration of Steven T. Gubner, ¶ 7  
25 (“Gubner Decl.”). On July 14, 2022, the Court entered the 2004 Order [ECF Nos. 267, 268].

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26  
27 <sup>1</sup> LVDF repeatedly alleges that because the CLA was for an amount “up to \$75 million,” LVDF  
28 could lend any amount or no amount. This is incorrect. The language is typical 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 CLA illusory.

1 On July 15, 2022, the Debtor filed a Notice of Intent to Issue Subpoenas with the Subpoenas  
2 attached as exhibits 1 through 4 [ECF No. 274, Exhibits. 1-4] in accordance with Local Rule  
3 9016(b). On the same day, the Debtor served the Subpoenas on counsel for the LVDF Parties via  
4 email and United States mail in accordance with Local Rule 9016(a) and (b). Gubner Decl., ¶ 6.  
5 The Subpoenas set the date for the production of documents as July 29, 2022, and the date of the oral  
6 examinations as August 1, 2022, which dates were not less than 14 days' notice in accordance with  
7 the 2004 Orders.

8 Notwithstanding that the 2004 Motions were filed on July 7, 2022, and that the topics of  
9 examination were disclosed in the LVDF 2004 Motion, on July 18, 2022, counsel for the LVDF  
10 Parties contacted the Debtor's counsel and requested a meet and confer regarding the Subpoenas.  
11 Gubner Decl., ¶ 8. On July 20, 2022 at 8:00 a.m., counsel for the Debtor and the LVDF Parties held  
12 a meet and confer regarding the Subpoenas. *Id.* at ¶ 9. At the meet and confer, counsel for the  
13 LVDF Parties represented that: (i) neither of the LVDF Parties would be producing any documents  
14 in response to the Subpoenas<sup>2</sup>; (ii) the Debtor, *at its own expense*, could request production of the  
15 documents already produced in the state court action from a third party vendor; (iii) neither of the  
16 LVDF Parties would be appearing for the examinations as Dziubla already appeared for depositions  
17 in the state court action; and (iv) many of the documents sought through the Subpoenas are protected  
18 from production based on the Protective Orders, notwithstanding that the documents are sought in a  
19 federal court in connection with a claim objection and plan confirmation. Gubner Decl., ¶ 10.

20 After the July 20, 2022, meet and confer had already begun, the Debtor's counsel received an  
21 email from counsel for the LVDF Parties [Exhibit 1 to the Gubner Decl.] (the "Champion Email")  
22 detailing the requests that the LVDF Parties contend are subject to the Protective Orders and are  
23 irrelevant to the Debtor's objection to the Claim. Notwithstanding that the LVDF Parties admit that  
24 approximately half of the Debtor's requests are not subject to Protective Orders and are relevant, the  
25 LVDF Parties have taken the untenable position that they are not required to produce any documents  
26

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 or appear for an examination because they appeared for depositions in the underlying state court  
 2 action and produced documents. As discussed below, these positions are contrary to the rules  
 3 governing Rule 2004 examinations.

4 **B. LVDF's Claim**

5 On August 8, 2022, LVDF filed Claim No. 284 in the amount of a \$11,655,706.01 secured  
 6 claim. In the Motion, the LVDF Parties argue that the Debtor should not be allowed to conduct a  
 7 Rule 2004 examination because it is unnecessary in light of the state court's estimation of LVDF's  
 8 claim in the context of determining the amount of bond the Debtor should be required to post to keep  
 9 the temporary restraining order prohibiting LVDF from foreclosing on the Debtor's real property in  
 10 place. As admitted by LVDF in the Motion (p. 10, n.7), the state court estimated LVDF's claim at  
 11 approximately \$9.7 million. However, in Claim No. 284, LVDF asserts that its claim is almost two  
 12 million more than the state court's estimation. It is perplexing that LVDF on the one hand asserts  
 13 that the Debtor and this Court must accept on the state court's estimation, but on the other hand does  
 14 not itself rely on such estimation. In addition, the state court did not take into account any of the  
 15 Debtor's claims or offsets in its determination. Simply put, the fact that the state court estimated  
 16 LVDF's claim for the limited purpose of determining the amount of bond, does not in any way  
 17 preclude the Debtor from conducting Rule 2004 examinations of the LVDF Parties regarding its  
 18 alleged claim, especially in light of LVDF's assertion that its claim is \$2 million more than the state  
 19 court estimation.

20 **III. THE 2004 EXAMINATIONS ARE PROPER UNDER RULE 2004**

21 **A. The Debtor Has Good Cause for Seeking the 2004 Examinations**

22 Rule 2004(a) of the Federal Rules of Bankruptcy Procedure states that "[o]n motion of any  
 23 party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004(a). As  
 24 explained in *In re Washington Mut., Inc.*, 408 B.R. 45, 49–50 (Bankr. D. Del. 2009):

25 The scope of a Rule 2004 examination is "unfettered and broad." *In re Bennett*  
 26 *Funding Group, Inc.*, 203 B.R. 24, 28 (Bankr.N.D.N.Y.1996).

27 The examination ... may relate only to the acts, conduct, or  
 28 property or to the liabilities and financial condition of the debtor,  
 or to any matter which may affect the administration of the debtor's

1 estate. [Additionally, in a] case under chapter 11 ... the  
 2 examination may also relate to the operation of any business and  
 3 the desirability of its continuance, the source of any money or  
 4 property acquired or to be acquired by the debtor for purposes of  
 consummating a plan and the consideration given or offered  
 therefor, and any other matter relevant to the case or to the  
 formulation of a plan.

5 Fed. R. Bankr.P. 2004(b). A Rule 2004 examination “is commonly recognized as  
 6 more in the nature of a ‘fishing expedition.’ ” *Bennett Funding*, 203 B.R. at 28. The  
 7 purpose of the examination is to enable the trustee to discover the nature and extent  
 8 of the bankruptcy estate. *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702,  
 708 (Bankr.S.D.N.Y.1991). Legitimate goals of Rule 2004 examinations include  
 9 “discovering assets, examining transactions, and determining whether wrongdoing  
 10 has occurred.” *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr.S.D.N.Y.2002). There  
 11 are, however, limits to the use of Rule 2004 examinations. *Id.* “It may not be used  
 for ‘purposes of abuse or harassment’ and it ‘cannot stray into matters which are not  
 12 relevant to the basic inquiry.’ ” *In re Table Talk, Inc.*, 51 B.R. 143, 145  
 (Bankr.D.Mass.1985) (*quoting In re Mittco, Inc.*, 44 B.R. 35, 36  
 (Bankr.E.D.Wis.1984)).

13 *Washington Mut.*, 408 B.R. at 49–50.

14 “When a party seeks to conduct a 2004 examination, and the party to be examined objects,  
 15 the former must show that it has ‘good cause’ to conduct the examination.” *In re Subpoena Duces*  
 16 *Tecum*, 461 B.R. 823, 829 (Bankr. C.D. Cal. 2011). “Generally, good cause is shown if the [Rule  
 17 2004] examination is necessary to establish the claim of the party seeking the examination, or if  
 18 denial of such request would cause the examiner undue hardship or injustice.” *Id.* (*quoting In re*  
 19 *Metiom, Inc.*, 318 B.R. 263, 268 (S.D.N.Y. 2004)). “Once the examiner establishes the existence of  
 20 ‘good cause,’ the burden shifts back to the objecting party to show that examination would be  
 21 oppressive or burdensome.” *Subpoena Duces Tecum*, 461 B.R. at 829.

22 Here, the Debtor can show that it has good cause for seeking the Rule 2004 examinations.  
 23 The Rule 2004 examinations relate to the Debtor’s anticipated objection to LVDF’s disputed claim  
 24 and the treatment of LVDF’s claim under the Debtor’s chapter 11 plan. The purpose of the Rule  
 25 2004 examinations is not to harass the LVDF Parties, but rather to examine the transaction between  
 26 LVDF and the Debtor and to determine whether there was any wrongdoing on LVDF’s behalf. This  
 27 is undoubtedly a proper basis for a Rule 2004 examination, and the Debtor is entitled to conduct  
 28 such examination. *See In re Enron Corp.*, 281 B.R. at 840.

1 In point of fact, Claim No. 284 includes not only \$6,375,000 in principal, but also includes  
2 past due interest of \$1,979,473.89, notwithstanding that the Debtor was not in default during the  
3 term of the loan (i.e., through the maturity date in October 2021), and over \$1.9 million in attorneys'  
4 fees, which the Debtor is informed and believe arise from attorneys' fees incurred related to LVDF's  
5 alleged fraudulent transfer claims and other similar claims against the Debtor's insiders eventhough  
6 LVDF's recovery of such fees is not provided for in the CLA. Some of the requests [ECF No. 274,  
7 Exhibit 2, Requests 3 through 8] seek a detailed accounting from LVDF for the very purpose of  
8 determining what portion of LVDF's claim, if any, is not subject to dispute. LVDF has refused to  
9 produce any documents detailing its accounting of any of the over-\$5 million in fees/penalties or  
10 application of the Debtor's payments to LVDF. Such requests are clearly within the ambit of Rule  
11 2004, and the Debtor has good cause for seeking these documents. Moreover, the LVDF Parties  
12 cannot show good cause for failing to produce these documents that are clearly in their control.

13 **B. The Pending Proceeding Rule Does Not Preclude the 2004 Examinations**

14 In the Motion, the LVDF Parties argue that the Rule 2004 examinations are in violation of  
15 the pending proceeding rule because of the Removed Action. The Debtor respectfully disagrees.  
16 First, the Removed Action is currently stayed, and the Debtor cannot seek discovery in a stayed  
17 action. Second, although LVDF filed a motion in the state court to extend the discovery deadline  
18 [ECF No. 311, ¶ 22], the state court never ruled on that motion, and the discovery deadline has  
19 passed. Thus, even if the pending proceeding rule applied, the Debtor would not be able to obtain  
20 the discovery through the Removed Action.

21 Third, and most importantly, the discovery sought pursuant to the Subpoenas is directly  
22 related to the amount and veracity of LVDF's claim, which is not directly at issue in the Removed  
23 Action. "The prohibition on use of Rule 2004 examinations once an adversary proceeding or  
24 litigation in another forum is commenced, however, has an exception best expressed by the court  
25 in *Bennett Funding*: '[d]iscovery of evidence *related* to the pending proceeding must be  
26 accomplished in accord with more restrictive provisions of [the Federal Rules of Bankruptcy  
27 Procedure], while *unrelated* discovery should not be subject to those rules simply because there is an  
28 adversary proceeding pending.' 203 B.R. at 29 (emphasis in original)." *Washington Mut.*, 408 B.R.



1 at 51. *See also In re Int'l Fibercom, Inc.*, 283 B.R. 290, 292 (Bankr. D. Ariz. 2002) (“Consequently  
2 when the Rule 2004 examination relates not to the pending adversary litigation, but to another  
3 matter, the ‘pending proceeding’ rule does not apply”); *In re M4 Enters., Inc.*, 190 B.R. 471, 475 n.  
4 4 (Bankr. N.D. Ga. 1995) (finding that the 2004 examination did not relate to the pending adversary  
5 proceeding and thus the ‘pending proceeding’ rule did not apply).

6 In the Removed Action, the Debtor asserts claims for, among other things, fraud in the  
7 inducement, intentional misrepresentation, breach of fiduciary duty and conversion. None of these  
8 claims deal directly with the amount of LVDF’s claim against the Debtor. Indeed, the Removed  
9 Action does not even include a breach of contract claim against the Debtor, and, thus, LVDF’s  
10 allegations that the Debtor is in default under the CLA is not encompassed in the adversary  
11 proceeding. The discovery sought in connection with the Rule 2004 examinations goes specifically  
12 to the legitimacy of LVDF’s alleged claim in the bankruptcy case. If the Rule 2004 examination  
13 uncovers that LVDF did not have the requisite funds to enter into the CLA then, among other things,  
14 its claim for default damages will be eliminated. Such evidence might also serve to reduce or  
15 eliminate the principal LVDF claims it is owed. Clearly, the Debtor is entitled to test the veracity of  
16 LVDF’s claims, and the Court should order the LVDF Parties to comply with the 2004 Orders.

### 17 C. State Court Protective Orders

18 In the Motion, LVDF Parties assert that the dispute between the parties boils down to one  
19 issue: the effectiveness of the Protective Orders in this bankruptcy case. Motion, 19:20-24. The  
20 LVDF Parties assert that the Protective Orders become orders of this Court upon removal and are  
21 binding in this bankruptcy case. The Debtor submits that the Protective Orders are not binding in the  
22 context of a Rule 2004 examination in the bankruptcy case (as opposed to the Removed Action).  
23 The LVDF Parties rely on the law of the case doctrine to support their argument. However, they fail  
24 to explain how law of the case applies in this circumstance when the Protective Orders were entered  
25 by a different court in a different action. The bankruptcy case and the Removed Action are not the  
26 *same case*. *See Stacy v. Colvin*, 825 F.3d 563 (9th Cir. 2016) (stating that the law of the case  
27 doctrine generally prohibits a court from considering an issue that has already been decided by that  
28 *same court* or a higher court *in the same case*) (emphasis added).

1 Second, to the extent that the Court finds that law of the case doctrine applies, as the  
2 bankruptcy court explained in *In re Hoch*, 577 B.R. 202, 211 (Bankr. E.D.N.C. 2017):

3 [T]he law of the case doctrine “is not an ‘inexorable command’ but rather a prudent  
4 judicial response to the public policy favoring an end to litigation.” *Sejman*, 845  
5 F.2d at 68 (quoting *White v. Murtha*, 377 F.2d 428, 431 (5th Cir. 1967)). Three  
6 well-established exceptions may justify a court in exercising discretion to revisit  
7 prior decisions and “depart from the law of the case: (1) ‘a subsequent trial  
8 produc[ing] substantially different evidence’; (2) a change in applicable law; or (3)  
9 clear error causing ‘manifest injustice.’ ” *Carlson v. Boston Sci. Corp.*, 856 F.3d  
10 320, 325 (4th Cir. 2017) (quoting *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d  
11 505, 515 (4th Cir. 2003)). The same tests apply whether litigants seek to revisit a  
12 final order pursuant to Federal Rule of Civil Procedure 59(e) or an interlocutory  
13 order under Federal Rule of Civil Procedure 54(b), but a slightly higher burden  
14 must be met when seeking to revisit a final order. *See Carlson*, 856 F.3d at 325.

15 *Hoch*, 577 B.R. at 211.

16 Indeed, the federal court can perform any act that it could have as if the case originated in  
17 federal court. *See Maseda v. Honda Motor Co., Ltd.*, 861 F.2d 1248, 1252 (11th Cir. 1988) (A  
18 federal court may dissolve or modify injunctions, orders, and all other proceedings which have taken  
19 place in state court prior to removal. A state court summary judgment did not foreclose modification  
20 of the judgment in federal court.); *Preaseau v. Prudential Ins. Co. of America*, 591 F.2d 74, 79 (9th  
21 Cir. 1979) (Court compares removal to the situation where a case is reassigned to a successor judge  
22 after denial of a motion to dismiss or a motion for summary judgment. There would be no abuse of  
23 discretion in overruling the prior judge. The practice reflects the rule that interlocutory rulings are  
24 subject to reconsideration by the court at any time.) (citations omitted); *Hawes v. Cart Products,*  
25 *Inc.*, 386 F.Supp.2d 681, 686 and 689 (D.S.C. 2005) (The weight of authority allows a defendant to  
26 remove a case to federal court after entry of a default judgment. It is well established that a federal  
27 district court has jurisdiction to consider a motion for relief from an order of default entered in state  
28 court.) (citations omitted); *Laney v. Schneider Nat'l Carriers, Inc.*, 259 F.R.D. 562, 564 (N.D. Okla.  
2009) (A federal court is free to reconsider a state court order and to treat the order as it would any  
interlocutory order it might itself have entered.) (citations omitted).

Here, there has been a change in applicable law. Namely, discovery sought under Rule 2004  
is much more expansive than discovery sought under Nevada state law, and the reasons for the  
Debtor's purpose in seeking the discovery have changed. The state court's analysis of whether the

1 investors' identities and investment information were germane to the Debtor's claims in the  
 2 Removed Action is not the same analysis as whether the requests in the Subpoenas are proper under  
 3 Rule 2004. LVDF is not a traditional lender, and it did not lend its own funds to the Debtor. The  
 4 funds loaned to the Debtor were from the investors and LVDF acted merely as an intermediary.  
 5 Essentially, the real parties in interest are the investors and, as such, the Debtor is entitled to  
 6 information regarding their immigration status and their investment in order to properly assess the  
 7 validity of LVDF's disputed claim. Further to this point, LVDF affirmatively represented that it had  
 8 sufficient financial resources (i.e., investors) to commit to a \$75 million loan. The discovery sought  
 9 is designed to test the veracity of LVDF's representations. The existence of sufficient investors and,  
 10 specifically, foreign investors, goes to LVDF's claims of default and calculations based thereon  
 11 (such as default interest). For example, LVDF claims that the Debtor took actions that placed  
 12 LVDF's foreign investors immigration status at risk. The Debtor is certainly entitled to test this  
 13 theory that LVDF believes supports its claim, especially given that LVDF has provided no evidence  
 14 of any material defaults by the Debtor. Additionally, any privacy concerns can be dealt with through  
 15 identifying information being redacted, subject to attorneys' eyes only and/or under a protective  
 16 order. Thus, it would not be an abuse of the Court's discretion to reconsider the interlocutory  
 17 Protective Orders.

18 Third, many of the requests claimed to be subject to the Protective Orders are in fact not  
 19 subject to the orders. In the Champion Email, Ms. Champion identifies several requests, which she  
 20 claims are subject to the Protective Orders. The Debtor disagrees with Ms. Champion's assertions as  
 21 to what requests are potentially subject to the Protective Orders. The Debtor's analysis as to the  
 22 requests [ECF No. 274, Exhibit 2] to LVDF is as follows:

No.	Request	Precluded by State Court Orders?
6	All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL EVIDENCING expenses paid by YOU RELATED TO the LOAN, including, but not limited to, expenses that were added to the balance of the LOAN and expenses paid by YOU directly.	No. This request is not related to the EB-5 Investors' identities and investment information.
9	All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL EVIDENCING the disposition of the payments made by the DEBTOR to YOU on account of the LOAN.	No. This request is not related to the EB-5 Investors' identities and investment information.

No.	Request	Precluded by State Court Orders?
1 2 3	10 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL EVIDENCING the disposition of the payments made by the DEBTOR to YOU on account of the Immigrant Investor Program.	No. This request is not related to the EB-5 Investors' identities and investment information.
4 5 6 7 8	24 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL with any actual, potential, or prospective investors REGARDING the LOAN.	No. The Protective Orders preclude information about the EB-5 Investors or potential investors; they do not preclude the substance of all communications with potential investors. Specifically, the representations made by LVDF to investors or potential investors is not precluded by the Protective Orders. Thus, to the extent that protected information is contained in any communications, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
9 10 11	25 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL with any agent and/or broker for any actual, potential, or prospective investors REGARDING the LOAN.	No. This request is not related to the EB-5 Investors' identities and investment information. To the extent that protected information is contained in any communications, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
12 13 14 15 16 17	26 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL that support or refute each and every representation that YOU made to any actual, potential, or prospective investors REGARDING the LOAN.	No. The Protective Orders preclude information about the EB-5 Investors or potential investors; they do not preclude the substance of all communications with potential investors. Specifically, the representations made by LVDF to investors or potential investors is not precluded by the Protective Orders. Thus, to the extent that protected information is contained in any documents, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
18 19 20 21 22	27 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL that support or refute each and every representation that YOU made to any actual, potential, or prospective investors REGARDING the LOAN.	No. The Protective Orders preclude information about the EB-5 Investors or potential investors; they do not preclude the substance of all communications with potential investors. Specifically, the representations made by LVDF to investors or potential investors is not precluded by the Protective Orders. Thus, to the extent that protected information is contained in any communications, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
23 24 25 26 27 28	28 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL that identify each investor and/or investment transaction RELATED TO the DEBTOR, including, but not limited to, the identity of each investor, the country of origin of each investor, the date of the transaction, the amount of the investment, the source of the funds for the investment, the current immigration status of the investor, and the current status of the investment.	Yes. However, the Debtor submits that this request is relevant to the Debtor's anticipated claim objection. LVDF is asserting that the Debtor has committed non-material breaches of the CLA and those breaches somehow placed the EB-5 investors' immigration status at risk. The Debtor seeks documents to establish whether any foreign investors contributed funds to the loan and the status of those investors' immigration. The Debtor seeks this documentation to support its assertion that it is not in breach of the CLA.

No.	Request	Precluded by State Court Orders?
1 2 3	31 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL with any and any third party REGARDING the LOAN, other than COMMUNICATIONS with YOUR counsel.	No. This request is not related to the EB-5 Investors' identities and investment information. To the extent that protected information is contained in any communications, LVDF can redact such information.
4 5 6	32 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL sent to or received by YOU from any third party REGARDING the LOAN.	No. This request is not related to the EB-5 Investors' identities and investment information. To the extent that protected information is contained in any documents, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
7 8 9	33 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL identifying the source of any funds used by YOU to fund the LOAN, including but not limited to the identify [sic] of any EB-5 investors.	Potentially. To the extent that the source of the funds used by LVDF to fund the loan came from any EB-5 investors, the identity of such investors can be redacted, subject to attorneys' eyes only and/or under a protective order.
10 11 12	34 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL identifying the source of any funds used by YOU to fund the LOAN, including but not limited to the identify [sic] of any EB-5 investors.	Potentially. To the extent that the source of the funds used by LVDF to fund the loan came from any EB-5 investors, the identity of such investors can be redacted, subject to attorneys' eyes only and/or under a protective order.
13 14 15 16 17	35 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL sufficient to identify the number of EB-5 investors and the amount of funds they contributed to fund the LOAN.	No. This request is not related to the EB-5 Investors' identities and investment information. Specifically, this request seeks documents to identify the total number of EB-5 investors and the total amount of funds contributed by such investors; not the identity of such investors or the specific amount each investor contributed. To the extent that protected information is contained in any documents, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
18 19 20 21 22	36 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL sufficient to identify the number of EB-5 investors and the amount of funds they contributed to fund the LOAN.	No. This request is not related to the EB-5 Investors' identities and investment information. Specifically, this request seeks communications to identify the total number of EB-5 investors and the total amount of funds contributed by such investors; not the identity of such investors or the specific amount each investor contributed. To the extent that protected information is contained in any communications, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
23 24 25 26 27 28	37 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL identifying the source of any funds received by YOU from EB-5 investors that provided funds for the LOAN, including but not limited to funds provided to Debtor, funds yet to be provided to Debtor, and funds received by YOU that have been used for purposes other than the principal of the LOAN, including but not limited to funds received by YOU or your affiliates,	Potentially. To the extent that the source of the funds used by LVDF to fund the loan came from any EB-5 investors, the identity of such investors can be redacted, subject to attorneys' eyes only and/or under a protective order.

No.	Request	Precluded by State Court Orders?
1 2	administrative fees, marketing fees, payments to migration companies, and payments to third-parties.	
3 4 5 6 7 8 9	38 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL identifying the source of any funds received by YOU from EB-5 investors that provided funds for the LOAN, including but not limited to funds provided to Debtor, funds yet to be provided to Debtor, and funds received by YOU that have been used for purposes other than the principal of the LOAN, including but not limited to funds received by YOU or your affiliates, administrative fees, marketing fees, payments to migration companies, and payments to third-parties.	Potentially. To the extent that the source of the funds used by LVDF to fund the loan came from any EB-5 investors, the identity of such investors can be redacted, subject to attorneys' eyes only and/or under a protective order.
10 11 12 13 14	39 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL identifying the date(s) through which any of YOUR EB-5 investors' capital must remain at risk, as it pertains to the LOAN.	No. The Protective Orders preclude information about the EB-5 Investors or potential investors. Specifically, the dates through which any of the EB-5 investors' funds must remain at risk is not precluded by the Protective Orders. Thus, to the extent that protected information is contained in any documents, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
15 16 17 18	40 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL identifying the date(s) through which any of YOUR EB-5 investors' capital must remain at risk, as it pertains to the LOAN.	No. The Protective Orders preclude information about the EB-5 Investors or potential investors. Specifically, the dates through which any of the EB-5 investors' funds must remain at risk is not precluded by the Protective Orders. Thus, to the extent that protected information is contained in any communications, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
19 20 21	45 Any requests for evidence from USCIS received by YOU or any of YOUR EB-5 investors related to the LOAN.	No. This request is not related to the EB-5 Investors' identities and investment information. To the extent such documents contain protected information, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
22 23	46 Any requests for evidence received by USCIS by YOU or any of YOUR EB-5 investors related to the LOAN.	No. This request is not related to the EB-5 Investors' identities and investment information. To the extent such documents contain protected information, such information can be redacted by LVDF.
24 25 26 27 28	47 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL that support YOUR requests for any DOCUMENTS from DEBTOR, as it relates to the EB-5 program or the EB-5 investors, including but not limited to the basis for any DOCUMENTS you claim are needed by the EB-5 investors and/or to submit to USCIS.	No. This request is not related to the EB-5 Investors' identities and investment information.

No.	Request	Precluded by State Court Orders?
1 2 3 4 5 6	49 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL identifying the immigration status of any of the EB-5 investors providing funds for the LOAN, including but not limited to whether they have submitted and/or received approval of their form I-526 or I-829, and whether they have been granted conditional residence status.	Yes. However, the Debtor submits that this request is relevant to the Debtor's anticipated claim objection. LVDF is asserting that the Debtor has committed non-material breaches of the CLA and those breaches somehow placed the EB-5 investors' immigration status at risk. The Debtor seeks documents to establish whether any foreign investors contributed funds to the loan and the status of those investors' immigration. The Debtor seeks this documentation to support its assertion that it is not in breach of the CLA.
7 8 9 10 11 12	50 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL identifying the immigration status of any of the EB-5 investors providing funds for the LOAN, including but not limited to whether they have submitted and/or received approval of their form I-526 or I-829, and whether they have been granted conditional residence status.	Yes. However, the Debtor submits that this request is relevant to the Debtor's anticipated claim objection. LVDF is asserting that the Debtor has committed non-material breaches of the CLA and those breaches somehow placed the EB-5 investors' immigration status at risk. The Debtor seeks documents to establish whether any foreign investors contributed funds to the loan and the status of those investors' immigration. The Debtor seeks this documentation to support its assertion that it is not in breach of the CLA.
13 14 15	51 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL related to the source of the \$2.7 million that YOU sought to loan to the DEBTOR, on or about March 11, 2022, including whether those funds were obtained from EB-5 investors.	Potentially. To the extent that the source of the \$2.7 million LVDF sought to loan to the Debtor came from any EB-5 investors, the identity of such investors can be redacted.
16 17 18	52 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL related to the source of the \$2.7 million that YOU sought to loan to the DEBTOR, on or about March 11, 2022, including whether those funds were obtained from EB-5 investors.	Potentially. To the extent that the source of the \$2.7 million LVDF sought to loan to the Debtor came from any EB-5 investors, the identity of such investors can be redacted, subject to attorneys' eyes only and/or under a protective order.
19 20 21	53 All demands, complaints, arbitration demands, lawsuits, or communications or documents threatening legal action from any EB-5 investors or third-parties, excluding the DEBTOR, related to the LOAN.	No. This request is not related to the EB-5 Investors' identities and investment information. To the extent such documents contain protected information, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
22 23 24 25 26 27	54 All I-526 or I-829 approvals or denials received by YOU, YOUR affiliates, or EB-5 investors, RELATED TO the LOAN.	Yes. However, the Debtor submits that this request is relevant to the Debtor's anticipated claim objection. LVDF is asserting that the Debtor has committed non-material breaches of the CLA and those breaches somehow placed the EB-5 investors' immigration status at risk. The Debtor seeks documents to establish whether any foreign investors contributed funds to the loan and the status of those investors' immigration. The Debtor seeks this documentation to support its assertion that it is not in breach of the CLA.

No.	Request	Precluded by State Court Orders?
1 2 3 4 5 6	57 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL sent by the EB5 Impact Advisors LLC to any actual, potential, or prospective investor REGARDING the LOAN.	No. The Protective Orders preclude information about the EB-5 Investors or potential investors; they do not preclude the substance of all communications with investors or potential investors. Specifically, the representations made to investors or potential investors is not precluded by the Protective Orders. Thus, to the extent that protected information is contained in any documents, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
7 8 9 10 11	58 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL sent by the EB5 Impact Advisors LLC to any actual, potential, or prospective investor REGARDING the LOAN.	No. The Protective Orders preclude information about the EB-5 Investors or potential investors; they do not preclude the substance of all communications with all investors or potential investors. Specifically, the representations made to investors or potential investors is not precluded by the Protective Orders. Thus, to the extent that protected information is contained in any communications, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
12 13 14 15 16	61 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL sent by the EB5 Impact Capital Regional Center LLC to any actual, potential, or prospective investor REGARDING the LOAN.	No. The Protective Orders preclude information about the EB-5 Investors or potential investors; they do not preclude the substance of all communications with investors or potential investors. Specifically, the representations made to investors or potential investors is not precluded by the Protective Orders. Thus, to the extent that protected information is contained in any documents, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
17 18 19 20 21 22	62 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL sent by the EB5 Impact Capital Regional Center LLC to any actual, potential, or prospective investor REGARDING the LOAN.	No. The Protective Orders preclude information about the EB-5 Investors or potential investors; they do not preclude the substance of all communications with all investors or potential investors. Specifically, the representations made to investors or potential investors is not precluded by the Protective Orders. Thus, to the extent that protected information is contained in any communications, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.
23 24 25 26 27 28	65 All DOCUMENTS, including, but not limited to, bank statements, manuals, operating procedures, memoranda, circulars, announcements, and emails, that establish, govern, amend, or otherwise control YOUR receipt, handling, control, utilization, and/or distribution of the money received from the actual, potential, or prospective investors and/or EB-5 visa applicants RELATED TO the LOAN.	Potentially. The Protective Orders preclude information about the EB-5 Investors or potential investors and the financial information of LVDF; they do not discovery regarding LVDF's procedures regarding its receipt and handling of funds related to the loan. To the extent that protected information is contained in any documents, such information can be redacted, subject to attorneys' eyes only and/or under a protective order.



In addition to the requests listed above, Dziubla asserts requests 18 and 44 [ECF No. 247, Exhibit 4] are precluded by the Protective Orders. The Debtor submits that these requests should be subject to production as they are not subject to the Protective Orders:

No.	Request	Precluded by State Court Orders
18	All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL EVIDENCING work performed by YOU in furtherance of raising funds for the DEBTOR under the Immigrant Investor Program.	No. This request is not related to the EB-5 Investors' identities and investment information.
44	All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL that support YOUR requests for any DOCUMENTS from DEBTOR, as it relates to the EB-5 program or the EB-5 investors, including but not limited to the basis for any DOCUMENTS you claim are needed by the EB-5 investors and/or to submit to USCIS.	No. This request is not related to the EB-5 Investors' identities and investment information.

The Debtor submits that the Protective Orders entered by a different court in a different action are not binding with respect to a Rule 2004 examination in the Debtor's bankruptcy case. To the extent that the Court finds that the Protective Orders are law of the case, the Debtor submits that there has been a change in applicable law such that the doctrine should not apply to the Rule 2004 examinations. Additionally, many of the requests claimed to be subject to the Protective Orders are in fact not subject to the orders, and to the extent any documents contain protected information, such information can be redacted, subject to attorneys' eyes only and/or under a protective order. Thus, the Debtor requests that the Court order the LVDF Parties to comply with the 2004 Orders.

**D. The Claimed Irrelevant Requests are in Fact Relevant to the Debtor's Anticipated Claim Objection and Formulation of the Debtor's Plan**

In the Champion Email, Ms. Champion asserts that several of the Debtor's requests are not relevant to its anticipated claim objection. The Debtor asserts that the disputed requests are relevant to the Debtor's objection to LVDF's claim and formulation of its chapter 11 plan of reorganization. With regard to the requests to LVDF [ECF No. 274, Exh. 2], the Debtor respectfully submits that the disputed requests are relevant for the following reasons:

No.	Request	Relevance
21	All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL EVIDENCING work performed by YOU in furtherance of raising funds for the DEBTOR under the Immigrant Investor Program.	This request is relevant to whether LVDF is in breach of the CLA, which is one of the numerous grounds for the Debtor's anticipated objection to LVDF's claim.
66	All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL REGARDING YOUR allegation that the DEBTOR	This request is relevant to LVDF's allegations that the

No.	Request	Relevance
1 2 3 4	violated the <i>Order Granting Las Vegas Development Fund LLC's Application for a Temporary Restraining Order and Motion for Preliminary Injunction to Prevent Transfer, Waste, and Destruction of Las Vegas Development Fund, LLC's Security and Collateral</i> , entered in the styled <i>Front Sight Management LLC v. Las Vegas Development Fund LLC, at al.</i> , Case No. A-18-781084-B, in the Eighth Judicial District Court, Clark County, Nevada.	Debtor committed wrongful acts and is in breach of the CLA, which claimed breaches are the basis for LVDF's claim for default interest.
5 6 7 8 9	67 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL REGARDING YOUR allegation that the DEBTOR violated the <i>Order Granting Las Vegas Development Fund LLC's Application for a Temporary Restraining Order and Motion for Preliminary Injunction to Prevent Transfer, Waste, and Destruction of Las Vegas Development Fund, LLC's Security and Collateral</i> , entered in the styled <i>Front Sight Management LLC v. Las Vegas Development Fund LLC, at al.</i> , Case No. A-18-781084-B, in the Eighth Judicial District Court, Clark County, Nevada.	This request is relevant to LVDF's allegations that the Debtor committed wrongful acts and is in breach of the CLA, which claimed breaches are the basis for LVDF's claim for default interest.
10 With regard to the requests to Dziubla [ECF No. 274, Exh. 4], the Debtor respectfully 11 submits that the disputed requests are relevant for the following reasons:		
No.	Request	Relevance
12 13 14 15	43 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL that support YOUR requests for any DOCUMENTS from DEBTOR, as it relates to the EB-5 program or the EB-5 investors, including but not limited to the basis for any DOCUMENTS you claim are needed by the EB-5 investors and/or to submit to USCIS.	This request is relevant to LVDF's allegations that the Debtor committed wrongful acts and is in breach of the CLA, which claimed breaches are the basis for LVDF's claim for default interest.
16 17 18	44 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL that support YOUR requests for any DOCUMENTS from DEBTOR, as it relates to the EB-5 program or the EB-5 investors, including but not limited to the basis for any DOCUMENTS you claim are needed by the EB-5 investors and/or to submit to USCIS.	This request is relevant to LVDF's allegations that the Debtor committed wrongful acts and is in breach of the CLA, which claimed breaches are the basis for LVDF's claim for default interest.
19 20 21	51 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL created by the EB5 Impact Advisors LLC REGARDING the LOAN.	This request is relevant to whether LVDF is in breach of the CLA, which is one of the numerous grounds for the Debtor's anticipated objection to LVDF's claim.
22 23	52 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL that YOU sent to the EB5 Impact Advisors LLC REGARDING the LOAN.	This request is relevant to whether LVDF is in breach of the CLA, which is one of the numerous grounds for the Debtor's anticipated objection to LVDF's claim.
24 25 26	55 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL created by the EB5 Impact Capital Regional Center LLC REGARDING the LOAN.	This request is relevant to whether LVDF is in breach of the CLA, which is one of the numerous grounds for the Debtor's anticipated objection to LVDF's claim.
27 28	56 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL that YOU sent to the EB5 Impact Capital Regional Center LLC REGARDING the LOAN.	This request is relevant to whether LVDF is in breach of the CLA, which is one of the numerous grounds for the Debtor's anticipated objection to

No.	Request	Relevance
1		LVDF's claim.
2 3 4 5 6	61 All DOCUMENTS in YOUR POSSESSION, CUSTODY or CONTROL REGARDING YOUR allegation that the DEBTOR violated the <i>Order Granting Las Vegas Development Fund LLC's Application for a Temporary Restraining Order and Motion for Preliminary Injunction to Prevent Transfer, Waste, and Destruction of Las Vegas Development Fund, LLC's Security and Collateral</i> , entered in the styled <i>Front Sight Management LLC v. Las Vegas Development Fund LLC, at al.</i> , Case No. A-18-781084-B, in the Eighth Judicial District Court, Clark County, Nevada.	This request is relevant to LVDF's allegations that the Debtor committed wrongful acts and is in breach of the CLA, which claimed breaches are the basis for LVDF's claim for default interest.
7 8 9 10 11 12	62 All COMMUNICATIONS in YOUR POSSESSION, CUSTODY or CONTROL REGARDING YOUR allegation that the DEBTOR violated the <i>Order Granting Las Vegas Development Fund LLC's Application for a Temporary Restraining Order and Motion for Preliminary Injunction to Prevent Transfer, Waste, and Destruction of Las Vegas Development Fund, LLC's Security and Collateral</i> , entered in the styled <i>Front Sight Management LLC v. Las Vegas Development Fund LLC, at al.</i> , Case No. A-18-781084-B, in the Eighth Judicial District Court, Clark County, Nevada.	This request is relevant to LVDF's allegations that the Debtor committed wrongful acts and is in breach of the CLA, which claimed breaches are the basis for LVDF's claim for default interest.

Accordingly, the Debtor submits that the disputed requests are relevant to the Debtor's objection to LVDF's claim and requests that the Court order the LVDF Parties to produce documents responsive to such requests.

**E. The LVDF Parties Should Be Required to Produce Documents Responsive to the Undisputed Requests and Appear for Examination**

The LVDF Parties assert that they should not be required to produce documents that do not implicate the Protective Orders because they have produced approximately 32,000 pages of documents in the underlying state court action. Notably, the documents that the LVDF Parties have produced are their initial disclosures and supplements thereto. Pursuant to Rule 16(a)(1)(A)(ii) of the Nevada Rules of Civil Procedure, a party must provide to the other parties "a copy--or a description by category and location--of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and *may use to support its claims or defenses*, including for impeachment or rebuttal, and, unless privileged or protected from disclosure, any record, report, or witness statement, in any form, concerning the incident that gives rise to the lawsuit." Nev. R. Civ. P. 16(a)(1)(A)(ii) (emphasis added).

Thus, the initial disclosures and supplements produced by the LVDF Parties are only documents that the LVDF Parties may use to support their claims or defenses. These may not be the

1 same documents the LVDF Parties would produce in response to specific requests propounded by  
2 the Debtor. Additionally, the Debtor should not be required to sort through 32,000 documents and  
3 be forced to spend estate resources determining whether those documents are relevant to any of the  
4 requests in the Subpoenas. That burden should squarely be placed on the LVDF Parties in  
5 accordance with Rule 2004.

6 Additionally, the LVDF Parties have not set forth any authority supporting their position that  
7 because they were deposed in the underlying state court action, they should not be required to appear  
8 for a Rule 2004 examination. As stated above, the discovery rules in state court do not apply to Rule  
9 2004 examinations in bankruptcy court. The Debtor is entitled to conduct the Rule 2004  
10 examinations, and the Court should order the LVDF Parties to comply with the 2004 Orders.

#### 11 **F. Witness Fee**

12 Finally, the LVDF Parties make much ado about the Debtor not tendering the \$40 witness fee  
13 concurrently with service of the Subpoenas. Pursuant to Rule 2004(e), “[a]n entity other than a  
14 debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one  
15 day's attendance shall be first tendered.” Fed. R. Bankr. P. 2004(e). In accordance with Rule  
16 2004(e), if, and when, the LVDF Parties confirm their attendance at the Rule 2004 examinations, the  
17 Debtor will tender such witness fee prior to the examination. The LVDF Parties are not entitled to  
18 any fee for mileage as the examinations will be conducted remotely via Zoom or a similar service.

#### 19 **IV. CONCLUSION**

20 For the foregoing reasons, the Debtor respectfully requests that the Court deny the Motion in  
21 its entirety and order LVDF and Dziubla to comply with the 2004 Orders.

22  
23 DATED: August 18, 2022

BG Law LLP

24 By: /s/ Jason B. Komorsky

Steven T. Gubner

Jason B. Komorsky

Susan K. Seflin

Jessica S. Wellington

25  
26 Attorneys for Chapter 11 Debtor in Possession  
27  
28

**CERTIFICATE OF SERVICE**

I declare that I am over the age of 18 years and not a party to the within action. I am employed in the County of Los Angeles and my business address is 21650 Oxnard Street, Suite 500, Woodland Hills, California 91367.

On August 18, 2022, I served the following document:

**DEBTOR’S OPPOSITION TO LVDF’S AND DZIUBLA’S MOTION TO QUASH 2004 EXAMS AND SUBPOENAS TO PRODUCE DOCUMENTS AND REQUEST FOR A PROTECTIVE ORDER**

**BY ELECTRONIC MAIL**

Those designated "[NEF]" on the Court docket were served with the Notice by the Court via Electronic Mail, as follows:

- **JASON BLUMBERG** Jason.blumberg@usdoj.gov
- **CHAPTER 11 - LV** USTPRegion17.lv.ecf@usdoj.gov
- **DAWN M. CICA** dcica@carlyoncica.com, nrodriguez@carlyoncica.com;crobertson@carlyoncica.com;dmcica@gmail.com;dcica@carlyoncica.com;tosteen@carlyoncica.com;3342887420@filings.docketbird.com
- **WILLIAM C DEVINE** william@devine.legal, courtney@devine.legal;devinewr72773@notify.bestcase.com
- **THOMAS H. FELL** tfell@fennemorelaw.com, clandis@fennemorelaw.com;CourtFilings@fennemorelaw.com
- **PHILIP S. GERSON** Philip@gersonnvlaw.com
- **STEVEN T GUBNER** sgubner@bg.law, ecf@bg.law
- **BART K. LARSEN** BLARSEN@SHEA.LAW, 3542839420@filings.docketbird.com
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- **JESSICA S. WELLINGTON** jwellington@bg.law

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed August 18, 2022, at Woodland Hills, California.

/s/ Jessica Studley  
JESSICA STUDLEY