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9 **UNITED STATES BANKRUPTCY COURT**
 10 **DISTRICT OF NEVADA**

11
 12
 13 In re
 14 Front Sight Management LLC,
 15 Debtor.

Case No. 22-11824-abl
 Chapter 11
Hearing Date: November 18, 2022
Hearing Time: 9:30 a.m.

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19 **OBJECTION TO CLAIM OF LAS VEGAS DEVELOPMENT FUND, LLC**

20 Front Sight Management LLC, the chapter 11 debtor and debtor in possession herein (“Front
 21 Sight” or the “Debtor”), hereby files its objection (“Objection”) and moves this Court for entry of an
 22 order pursuant to Section 502 of 11 U.S.C. §§ 101 *et seq.* (“Bankruptcy Code”), Rule 3007 of the
 23 Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and Local Bankruptcy Rule 3007,
 24 disallowing in its entirety any claim asserted by Las Vegas Development Fund, LLC (“LVDF”)
 25 including Proof of Claim No. 284-1¹ (“Claim No. 284”) filed on August 8, 2022 in the amount of a
 26 \$11,655,706.01 secured claim, whether asserted as secured, priority unsecured, and/or general
 27

28 ¹ Pursuant to Local Bankruptcy Rule 3007(a)(4), a copy of the first page of Proof of Claim No. 284-1 is attached hereto.

1 unsecured, and regardless of when and how asserted, inclusive of any amendments to Claim No. 284
2 (collectively, the “Claim”). In respect of the Claim, LVDF holds a recorded deed of trust which
3 encumbers property of the Debtor’s estate.

4 This Objection is based upon the following grounds:

5 1. LVDF’s Fraud in the Inducement – The purported agreement giving rise to the
6 Debtor’s relationship with LVDF, that certain *Construction Loan Agreement* between the Debtor and
7 LVDF, dated October 6, 2016 (the “CLA”), was procured by means of LVDF’s fraud in the
8 inducement, in that at the time the CLA was entered into, LVDF did not have a legitimate basis to
9 represent to the Debtor that LVDF could fund up to the amount of \$75 million loan amount, which
10 amount was later reduced to \$50 million, which was the principal material premise of the CLA upon
11 which the Debtor reasonably relied in entering into the CLA and taking action, and not taking other
12 action, in reliance thereon; had the Debtor known that LVDF would not and could not fund
13 consistent with its representations, the Debtor would not have entered into the CLA with LVDF.
14 LVDF’s failure to fund beyond \$6,375,000 resulted in significant harm to the Debtor.

15 2. LVDF’s Material Breach of Contract – LVDF materially breached its obligations
16 under, and otherwise failed to perform the CLA, including, most importantly and without limitation,
17 by refusing to provide funding upon which the Debtor reasonably relied under the guise of
18 manufactured and unreasonable pretenses which had the effect of denying the Debtor the benefit of
19 the CLA and substantially prejudicing the Debtor’s operations and causing the Debtor to suffer
20 millions of dollars of damages and lost opportunities far in excess of the amount of the Claim.

21 3. Illusory Contract is Not Enforceable – The CLA was illusory as interpreted by LVDF
22 and therefore unenforceable by LVDF, in that LVDF has taken the position that the CLA imposed
23 no obligations on LVDF whatsoever to lend notwithstanding the Debtor’s qualification for funding
24 or compliance with the CLA, thus, the CLA lacked bargained for exchange of consideration in that
25 there was – as LVDF itself contends – no legal detriment to LVDF or legal benefit to the Debtor.

26 4. Breach of the Obligation of Good Faith and Fair Dealing – LVDF’s lack of good faith
27 and fair dealing for pretending the Debtor had breached the CLA due to alleged non-material
28 breaches that were in fact contrivances LVDF cited as a basis to not provide funding and to deflect

1 from the fact that it lacked the financial wherewithal to perform under the CLA, causing substantial
2 harm to the Debtor by scuttling its real estate development after the Debtor's substantial
3 expenditures for grading land and other improvements.

4 5. Failure to Produce Required Documentation – The failure of LVDF and its principals,
5 without just cause, to provide documents and testimony in derogation of the Debtor's properly
6 noticed 2004 examination, the consequences of which, among other things, should preclude LVDF
7 from presenting any such documents and testimony in response to this Objection, thus dooming the
8 Claim to disallowance for the claimant's failure to meet its burden of proving up such claim.

9 6. Excessive and Unreasonable Attorneys' Fees – LVDF's Claim includes more than
10 \$1.7 million of attorneys' fees to which LVDF is not entitled, including because litigation against
11 parties other than the Debtor that LVDF pursued were not covered by the CLA, and the fees that
12 purportedly are within the CLA resulted from LVDF's bad faith scheme of using litigation without
13 just cause as a sword to hide its own inability to perform the CLA for its lack of financing and as a
14 means of depleting the Debtor's resources to diminish its ability to pursue LVDF for its breaches,
15 and because those fees were incurred after LVDF materially breached the CLA. The fees are also
16 inappropriate because they were incurred, in part, after the Debtor filed for bankruptcy protection
17 and in furtherance of violations of the automatic stay or in defense of their actions in violating the
18 automatic stay.

19 7. Inappropriate Interest Charges – Notwithstanding that through to the maturity date the
20 Debtor timely made all monthly interest payments required by the CLA, LVDF purported to charge
21 the Debtor default interest based on alleged and disputed non-material breaches which did not
22 support the imposition of default interest and which alleged non-material defaults occurred, if at all,
23 after LVDF materially breached the CLA. Thus, LVDF was not entitled to enforce any rights it
24 might otherwise have had with respect to such non-material breaches (if any).

25 8. Debtor's Offsets for Damages and Charges – In addition to the damages, lost
26 opportunity costs and breach of the CLA (which were estimated pre-petition to be in excess of \$20
27 million – and which do not include the actual damages and costs related to the Debtor's bankruptcy
28 filing and the claims asserted against the Debtor), the Debtor is also entitled to an offset for its

1 claims against LVDF’s principals, including \$300,000 for the alleged formation of the regional
 2 center, \$100,000 for alleged “marketing charges”, and \$8,000 per investor for alleged “ongoing
 3 marketing charges” (which charges LVDF falsely represented to the Debtor were required to pay to
 4 an affiliate of LVDF for which the Debtor received no commensurate value). These claims are
 5 stated more fully in that certain Second Amended Complaint by the Debtor against LVDF and its
 6 principals, among others, in that certain action captioned *Front Sight Management LLC v. Las Vegas*
 7 *Development Fund LLC et al.*, filed January 4, 2019, in the Eight Judicial District Court, Clark
 8 County, Nevada, as Case No. A-18-781084-B (the “LVDF Litigation”), which action has since been
 9 removed to this Court and is pending as Adversary Proceeding No. 22-01116-abl (the “Adversary
 10 Proceeding”).²

11 This Objection is based upon the annexed Memorandum of Points and Authorities, and the
 12 Declaration of Ignatius Piazza filed concurrently herewith, all admissible oral and documentary
 13 evidence that may be presented prior to or at the hearing on the Objection, as well as all of the
 14 pleadings, papers, and exhibits filed in support of the Objection, and such other and further evidence
 15 as may be provided at any hearing on the Objection.

16 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order:

- 17 1. Sustaining the Objection and disallowing the Claim in its entirety;
- 18 2. Providing that the Court’s ruling on the Objection shall have no preclusive effect on,
 19 and is without prejudice to, the Debtor’s right to: (a) object to, or seek disallowance of, the Claim on
 20 any other grounds as the Debtor may later assert; (b) assert in any venue any claims, demands for
 21 affirmative relief requiring an adversary proceeding, counterclaims, rights of offset or recoupment,
 22 preference actions, fraudulent transfer actions, or any other bankruptcy or non-bankruptcy claims
 23 and causes of action against LVDF; and (c) withdraw without prejudice the Objection prior to the
 24 hearing thereon and, in case of any such withdrawal, to assert the same (or other) objections to such
 25 Claim in a later objection(s) to such Claim;

26
 27 _____
 28 ² For the avoidance of doubt, the Debtor is not hereby seeking any affirmative recovery from LVDF;
 rather, the Debtor is entitled to offset the Claim to the extent of the Debtor’s claims against LVDF
 which the Debtor contends exceed the amount of the Claim.

1 3. Providing that if LVDF files or asserts, or has asserted, any other claim, or an
2 amendment of any proof of claim, related to the Claim addressed by this Objection, then such other
3 claim(s) and/or amendment(s) shall be deemed disallowed with prejudice, and automatically
4 expunged from the register of claims maintained in the Case, without the need for any further action
5 by any party in interest and without the need for any further order of this Court;

6 4. Providing that, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, made
7 applicable in contested matters through Bankruptcy Rules 7054 and 9014, the Court's ruling on the
8 Objection shall be treated as a final judgment with respect to the LVDF and its Claim subject to such
9 ruling, and determining that there is no just reason for delay in entry of a final judgment on the
10 Claim resolved herein; and

11 5. Granting the Debtor such other and further relief as the Court deems just and proper.

12 DATED: September 29, 2022

BG Law LLP

13
14 By: /s/ Susan K. Seflin

Steven T. Gubner

Jason Komorsky

Susan K. Seflin

Jessica S. Wellington

Attorneys for Front Sight Management LLC

Chapter 11 Debtor in Possession

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Objection in this district is property pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

The statutory predicates for the relief sought herein are Section 11 U.S.C. §§ 105 and 502 and Bankruptcy Rule 3007.

Pursuant to Local Bankruptcy Rules 7008 and 7012, the Debtor consents to the entry of final orders or judgments by this Court if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

II. STATEMENT OF FACTS

A. General Case Background

On May 24, 2022, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its financial affairs as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

On June 9, 2022, United States Trustee for Region 17 filed its *Amended Appointment of the Official Committee of Unsecured Creditors* [ECF No. 116].

B. Description of the Debtor’s Business

The Debtor was founded in 1996 by Ignatius Piazza. Dr. Piazza owns, either directly or indirectly, 100% of the Debtor. The Debtor was originally formed as a California business and operated near Bakersfield, California, from its formation in 1996 until 2002. In 1998, the Debtor purchased 550 acres of raw land 45 minutes from Las Vegas, acquired approximately 500 acre feet of water rights and began building what is now the finest and largest private firearms training facility in the world (the “Front Sight Property”).

In 2012, the Debtor became a Nevada limited liability company. The Debtor’s primary place of business is the Front Sight Property located at 1 Front Sight Road, Pahrump, Nevada 89061, Nye County Assessor’s Parcel Nos. 045-481-05 and 045-481-06.

1 The Front Sight Property is accessed by a four-mile, two lane paved road, and is currently
2 comprised of 50 outdoor firearms training ranges, live fire tactical training simulators, an 8,000
3 square foot classroom and pro shop, and assorted accessory buildings, bathrooms, three water wells
4 and thousands of square yards of completed grading for future development (the “Front Sight
5 Property Facility”).

6 The Debtor provides firearms training courses which promote the defensive use of various
7 firearms. Courses are offered to the general public, members of law enforcement and military
8 members.

9 The Front Sight Firearms Facility is the most successful firearms training facility of its type
10 in the United States. The Debtor provides classes and instruction annually to upward of 40,000 gun
11 and weapons enthusiasts. The Debtor is considered the leader in its field, and provides additional
12 training and instruction for numerous city and state agencies seeking to improve performance of
13 their respective law enforcement departments.

14 Over the last 25 years, the Debtor has trained a million students and as of the Petition Date,
15 the Debtor had over 261,000 members.

16 As of January 19, 2022, the Front Sight Property (including the land, water rights and
17 improvements but excluding equipment and inventory) was appraised at \$25,260,000 “as is.” A copy
18 of this appraisal is attached as “Exhibit D” to the *Omnibus Declaration of Ignatius Piazza In Support*
19 *of First Day Motions*, filed May 25, 2022 [ECF No. 21] (the “First Day Declaration”).

20 Historically, the Debtor operated its business by selling “lifetime” memberships, plus the
21 Debtor sells ancillary products. Pre-petition, to take its business “to the next level,” the Debtor
22 developed a major expansion plan that contemplated the construction of a vacation and resort
23 development to be known as the “Front Sight Vacation Club & Resort,” to include vacation
24 residences, an RV park and related facilities, a retail area, and a pavilion. The Debtor envisioned
25 creating a self-fulfilling ecosystem, involving memberships and promotional benefits, that would
26 lead to an incentivized customer base that would take advantage of the club and resort and other
27 offerings to redound to the Debtor’s benefit (collectively, the “Project”).

28

1 **C. Disputed Lending Transaction with LVDF and the Reasons Behind the Debtor’s**
2 **Bankruptcy Filing**

3 To further its plans for expansion, the Debtor began researching its financing options. In
4 2012, the Debtor was approached by Robert W. Dziubla (“Dziubla”) and John Fleming (“Fleming”),
5 doing business as Las Vegas Development Fund LLC (“LVDF”), who represented themselves as
6 “like-minded, pro-gun patriots” who told the Debtor’s principal they would be able to obtain a
7 financing package to fund the Debtor’s construction of the Vacation Club & Resort for which, as an
8 initial payment, they would require the Debtor to pay \$300,000 in fees needed to secure approval
9 from the United States Customs and Immigration Service (“USCIS”) plus \$100,000 in marketing
10 costs to solicit foreign investors to participate in an EB-5³ immigration investment plan.

11 The Debtor initially declined the Dziubla, Fleming and LVDF offer twice. Dziubla and
12 Fleming persisted and promised the Debtor that due to their representation that they had vast
13 experience raising foreign investments (which representation, on information and belief, is false),
14 their personal connections in China (which representation, on information and belief, was
15 exaggerated if not outright false), and their desire to help the Debtor complete its development
16 (which representation was dubious at best), that they could raise the necessary funds within a year.

17 After months of solicitation, Front Sight accepted Dziubla’s and Fleming’s proposal and paid
18 the requested \$300,000 in fees to an entity owned by Dziubla and Fleming other than LVDF (the
19 “D&F Entity”). Instead of taking a year to secure the USCIS approval, as LVDF had promised,
20 approval was not forthcoming for more than two years. Front Sight also paid the D&F Entity an
21 additional \$220,000, allegedly for “marketing fees” that Dziubla and Fleming represented was
22 required to be paid. Despite Dziubla’s and Fleming’s representations and the Debtor’s payments of
23 \$550,000, LVDF’s promised funding did not materialize in 2012.

24
25
26 ³ An “EB-5” investment allows qualified foreign investors who meet specific capital investments
27 and job creation requirements to potentially obtain permanent residency. More information on this
28 program is available at the following website of the U.S. Citizenship and Immigration Services, an
official website of the United States government: <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program>.

1 Four years later, in 2016, Dziubla and Fleming continued their misrepresentations by stating
2 LVDF had secured the first \$2.5 million in investor funding, and that LVDF had “hundreds” of
3 investors in the pipeline, each to invest no less than \$500,000, to fund the construction Project;
4 however, LVDF represented to Front Sight that it would need to execute a construction loan
5 document (the CLA) to start the flow of money. In October of 2016, the Debtor was induced to sign
6 the CLA with the understanding and reasonable expectation that LVDF would be in a position to
7 provide up to \$75 million in funding.

8 Thereafter, LVDF provided only \$6.375 million in funding over the next two years, all of
9 which was used by Front Sight in accordance with the parameters of the CLA. During this time
10 period, the Debtor paid the interest payments on the drawn funds every month on time and in full.
11 By 2018, the Debtor became suspicious that the funds advanced to the D&F Entity (the \$300,000 in
12 fees and \$220,000 for marketing) had not actually been used to secure USCIS approval and for
13 marketing the project to foreign investors; the Debtor requested that Dziubla and Fleming produce
14 evidence to support their representations to the Debtor in this regard.

15 Dziubla and Fleming refused to show proof of where the funds the Debtor paid had been
16 spent, and apparently in retaliation for the Debtor’s demands, Dziubla and Fleming claimed falsely
17 and intentionally that the Debtor was in default on a number of terms of the CLA (notwithstanding
18 that the Debtor was not in default).

19 The litany of false representations by Dziubla and Fleming and LVDF in the context of the
20 CLA was set out by the Debtor in the Second Amended Complaint filed in the LVDF Litigation, a
21 true and correct copy of which is attached as **Exhibit 1** to the concurrently filed Declaration of
22 Ignatius Piazza (the “Piazza Decl.”) and is incorporated by this reference.

23 The Debtor performed all of its material obligations, and made demands and qualified for
24 provision of funding, under the CLA; however, LVDF never provided more than \$6,375,000 in
25 “Construction Loan” (as defined in the CLA) disbursements. On information and belief, LVDF
26 never provided the additional funding to which the Debtor was entitled and for which it qualified
27 under the CLA because LVDF simply never had or obtained the financial wherewithal to provide
28 such funding.

1 By failing to provide the funding on which the Debtor reasonably relied, Dziubla, Fleming
2 and LVDF defaulted on their obligations, leading the Debtor to commence the LVDF Litigation
3 which has since been removed to this Court.

4 In the LVDF Litigation, the Debtor asserts claims for, among other things, fraud in the
5 inducement, intentional misrepresentation, breach of fiduciary duty and conversion against the
6 LVDF Parties. Dziubla, Fleming, and LVDF (collectively, with Dziubla and Fleming, the “LVDF
7 Parties”) then filed a fraudulent foreclosure action against the Debtor. The judge in the civil action
8 initially placed a temporary restraining order on the foreclosure action but that was lifted before the
9 petition date due to the Debtor’s inability to obtain a bond.

10 The Debtor’s pre-petition legal fees related to the LVDF Litigation and foreclosure action
11 exceeded one million dollars. The Debtor’s claims for offset, asserted hereby, including the Debtor’s
12 claim for recovery of these attorneys’ fees which would not have been incurred but for the LVDF
13 Parties’ breaches and wrongful conduct.

14 Furthermore, the most damaging consequences arising out of the LVDF Parties’ malfeasance
15 are (a) the loss of momentum the Debtor suffered in completing the development of its Project, (b)
16 the loss of member confidence the Debtor suffered due to all the delays in the Project, (c) the
17 resulting reduction in membership sales, and (d) the increased difficulty for the Debtor to obtain
18 additional financing to complete the Project. Pre-petition, the Debtor’s lost profits / damages expert
19 estimated the Debtor’s damages and lost opportunity costs due to LVDF’s breach of the CLA at over
20 \$20 million. The Debtor is entitled to an offset for its estimated pre-petition damages and lost
21 opportunity costs, as well as actual damages and costs relating to the Debtor’s bankruptcy filing –
22 which filing would not have been necessary but for LVDF’s failure to fund under the CLA and
23 LVDF’s wrongful foreclosure action. The Debtor is also entitled to an offset for its claims against
24 LVDF’s principals, including \$300,000 paid by the Debtor for the alleged formation of the regional
25 center, \$100,000 paid by the Debtor for alleged “marketing charges”, and \$8,000 paid by the Debtor
26 per investor for alleged “ongoing marketing charges” (which charges LVDF falsely represented to
27 the Debtor were required to pay to an affiliate of LVDF for which the Debtor received no
28 commensurate value). Lastly, the Debtor is entitled to an offset for its attorneys’ fees and costs

1 spent post-petition in response to LVDF’s violation of the automatic stay while LVDF cannot seek
 2 to recover attorneys’ fees for its efforts relating to its violation of the automatic stay.

3 **III. LVDF’s CLAIM**

4 The Debtor scheduled the Claim based on that certain Loan Statement and Invoice dated
 5 April 25, 2022 (the “April 2022 Invoice”), that it received from LVDF, a true and correct copy of
 6 which is attached as **Exhibit 2** to the Piazza Decl., which provides, among other things, as follows:

Loan Summary		
Account Reference		LVDF-LOAN
Loan Initiation Date		10/7/2016
Max Principal Amount	\$	50,000,000.00
Opening Principal*	\$	8,065,958.44
Loan Advances	\$	53,894.75
Current Principal Balance		
	\$	8,119,853.19
Available Principal	\$	41,880,146.81

Billing Summary		
Payment Due Date		5/1/2022
<i>Late Fee at 3% if payment is not received on or before 5/7/2022</i>		
Current Interest Due	\$	79,011.03
Past Due Interest	\$	1,738,119.69
Current Legal/Attorneys' Fees	\$	53,894.75
Past Due Legal/Attorneys' Fees	\$	1,690,958.44
Current Foreclosure Costs (Partial)	\$	3,912.09
Past Due Foreclosure Costs	\$	131,364.53
Late Fee - (Current Month + Past Due)	\$	955,695.73
Opening Principal Due	\$	6,375,000.00
Total Amount Due	\$	11,027,956.26

Interest and Fees Summary			
Default Interest Rate (Advances prior to 7/1/17)			11.00%
	\$	2,625,000.00	
Daily Interest Charge	\$		802.08
Default Interest Rate (Advances after 7/1/17)			12.00%
	\$	3,750,000.00	
Daily Interest Charge	\$		1,250.00
Default Interest Rate (Advances/Attorneys' Fees after 7/1/18)			12.00%
	\$	1,744,853.19	
Daily Interest Charge	\$		581.62

Payments Summary YTD		
Principal	\$	-
Interest	\$	-
Loan Servicing Fee	\$	-

17 On August 8, 2022, LVDF filed Claim No. 284 against the Debtor in the amount of a
 18 \$11,655,706.01 secured claim, broken down as follows:

Description	Amount Due
Principal Due	\$6,375,000
Late Fees (Current Month + Past Due)	\$1,126,573.55
Past Due Foreclosure Costs	\$155,341.71
Current Foreclosure Costs (Partial)	\$3,813.84
Past Due Legal/Attorneys’ Fees	\$1,858,863.24
Current Legal/Attorneys’ Fees	\$82,959.69
Past Due Interest	\$1,979,473.89
Current Interest Due Interest	\$83,680.09
Amount Due	\$11,655,706.01

27 Claim No. 284, at Part 2.
 28

1 As reflected therein, Claim No. 284 includes not only \$6,375,000 in principal, but it also
2 includes past due interest of \$1,979,473.89 notwithstanding that the Debtor was not in default during
3 the term of the loan (i.e., through the maturity date in October 2021), and over \$1.9 million in
4 attorneys' fees, which the Debtor is informed and believe arise from attorneys' fees incurred related
5 to alleged fraudulent transfer claims and other similar claims against the Debtor's insiders (at a time
6 when any claim held by LVDF was vastly over-secured) and notwithstanding that LVDF's recovery
7 of such fees are not provided for in the CLA (assuming LVDF were entitled to enforce the CLA
8 notwithstanding its prior material breaches), and also include fees post-petition relating to activities
9 that violated the automatic stay.

10 **IV. BASIS FOR RELIEF**

11 A. LVDF's Fraud in the Inducement Serves as a Basis to Disallow any Claim Asserted 12 by LVDF

13 To prevail on a claim for fraud, also known as intentional misrepresentation, a plaintiff must
14 prove the following elements by clear and convincing evidence: (a) that the defendant made a false
15 representation; (b) with knowledge or belief that the representation was false or without a sufficient
16 basis for making the representation; (c) that the defendant intended to induce the plaintiff to act or
17 refrain from acting on the representation; (d) the plaintiff justifiably relied on the representation; and
18 (e) the plaintiff was damaged as a result of his reliance. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441,
19 956 P.2d 1382 (1998); *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290-91,
20 89 P.3d 1009 (2004); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1260, 969 P.2d 949
21 (1998) (plaintiff has burden of proving each element of fraud claim by clear and convincing
22 evidence). The suppression or omission of a material fact which a party is bound in good faith to
23 disclose is equivalent to a false representation, since it constitutes an indirect representation that such
24 fact does not exist. *Betsinger v. D.R. Horton, Inc.*, 232 P.3d 433 (Nev. 2010); *see also Nevada*
25 *Power Co. v. Monsanto Co.*, 891 F. Supp. 1406 (D. Nev. 1995) (a defendant may be liable for
26 misrepresentation when he makes a representation that is misleading because it partially suppresses
27 or conceals information).

1 At all material times, LVDF and its principals represented that they were experts in EB-5
2 financing that could raise enormous amounts of money (\$75,000,000) very quickly. In point of fact,
3 LVDF and its principals had no experience raising money in connection with any EB-5 program.
4 Their contrary statements of fact to the Debtor were made without any reasonable basis and they
5 knew they were false. Every one of these false statements related to their experience, skill, training,
6 and expertise made to induce the Debtor and did induce the Debtor to enter into the CLA. But for
7 these representations, the Debtor would not have entered into the CLA as a \$6 million loan did not
8 assist the Debtor in accomplishing its goal of building the Project.

9 LVDF and its principals made material, false statements, with knowledge of their falsity, the
10 Debtor relied on those statements, and the Debtor suffered damages thereon when LVDF did not,
11 including because it could not, provide the promised loan funding. Critically, the entirety of the
12 Project was based upon LVDF's ability to provide the requisite funds (\$75,000,000 reduced to
13 \$50,000,000). Had the Debtor known that LVDF could not provide these funds or any funds close
14 thereto, the Debtor would not have entered into the CLA and would not have spent CLA proceeds on
15 grading and other pre-construction activities. Rather, before proceeding with construction on the
16 Project, the Debtor would have obtained a ready and able lender.

17 LVDF's fraudulent statements—relating to the engagement letter and the CLA—included
18 without limitation:⁴

- 19 ➤ LVDF and its principals lied about their experience with EB-5 fundraising and
20 fundraising in general;
- 21 ➤ LVDF and its principals lied about the amount of money they could raise;
- 22 ➤ LVDF and its principals lied about not getting paid until or unless they were
23 successful;
- 24 ➤ LVDF and its principals lied about the amount of time it would take to raise the
25 money;

26
27 _____
28 ⁴ The evidence in support of the proof of the fraudulent statements was submitted in the LVDF
Litigation in connection with the Debtor's Statement of Undisputed Facts filed on January 17, 2020,
a copy of which is attached as **Exhibit 3** to the Piazza Decl.

- 1 ➤ LVDF and its principals lied about their relationship with Empyrean West, LLC and
- 2 Empyrean West, LLC’s connections;
- 3 ➤ LVDF and its principals lied about the expenses being minimal and “reimbursable”
- 4 such that they would keep accurate records to justify the expenses; and
- 5 ➤ LVDF and its principals consistently concealed the true status of the EB-5 fundraise
- 6 they were attempting (unsuccessfully).

7 For the foregoing reasons, as supported by the accompanying and cited evidence, LVDF
8 fraudulently induced the Debtor to enter into the CLA to the Debtor’s substantial detriment, thereby
9 causing the Debtor to suffer damages in an amount in excess of the Claim.

10 B. LVDF’s Breach of Contract Serves as a Basis to Deny the Entirety of LVDF’s Claim
11 or, at a Minimum, the Amounts in Excess of the Original Principal Amount

12 To state a claim for breach of contract, a party must demonstrate four elements:

- 13 (1) formation of a valid contract;
- 14 (2) performance or excuse of performance by plaintiff;
- 15 (3) material breach by the defendant; and
- (4) damages.

16 *Laguerre v. Nev. Sys. Of Higher Educ.*, 837 F. Supp. 2d 1176, 1180 (D. Nev. 2011); *see also Padilla*
17 *Construction Company of Nevada v. Big-D Construction Corp.*, 132 Nev. 1014 (Nev.) (unpublished)
18 (citing *Laguerre* affirmatively).

19 At all material times, the Debtor performed under the CLA. Not only did it pay contractual
20 interest when due through the maturity date specified in the CLA, but the Debtor presented
21 undisputed evidence that it used the loan proceeds it received as required under the CLA. Indeed,
22 the Debtor presented evidence demonstrating that it spent more on the Project than it received from
23 LVDF under the CLA. See, **Exhibit 4** to the Piazza Decl.

24 Conversely, LVDF materially breached the CLA. Despite the fact that the Debtor was
25 current on the CLA, had met benchmarks thereunder and was entitled to additional funds under the
26 CLA, LVDF refused and failed to fund under the CLA such that the Debtor could not complete the
27 Project and, in fact, could do very little with respect to the Project.

1 In *J.A. Jones Contr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 89 P.3d 1009 (Nev.
2 2004), the Nevada Supreme Court confirmed the propriety of bringing a claim of fraud in the
3 inducement and breach of contract together. The Court noted:

4 As the Ninth Circuit Court of Appeals has recognized, causes of action
5 for fraud in the inducement and breach of contract may be pursued as
6 distinct claims with separate and consistent remedies:

7 It is the law that one who has been fraudulently induced into a
8 contract may elect to stand by that contract and sue for
9 damages for the fraud. When this happens and the defrauding
10 party also refuses to perform the contract as it stands, he
11 commits a second wrong, and a separate and distinct cause of
12 action arises for the breach of contract....The courts of many
13 states have recognized the rule that a suit on a contract and a
14 suit for fraud in inducing the contract are two different causes
15 of action with separate and consistent remedies.

16 *Id.* at 288-89 (quoting *Bankers Trust Co. v. Pacific Employers Insurance Co.*, 282 F.2d 106, 110 (9th
17 Cir. 1960)).

18 Among other breaches established by admissible evidence:

- 19 ➤ LVDF and its principals never came close to raising the \$75 million (or even the
20 reduced amount of \$50 million) that LVDF and its principals promised.
- 21 ➤ LVDF and its principals, by the end of 2017, ceased their efforts to raise funds to
22 extend the financing they it had promised even though they continued to charge and
23 receive from the Debtor monies for marketing efforts; and
- 24 ➤ LVDF and its principals failed to comply with the contractual obligation under the
25 CLA to give 5-days' notice as to the \$1 million to \$2 million it was holding in escrow
26 but had not yet distributed to the Debtor. The failure to notify was a material breach.

27 The evidence reflects that LVDF and its principals used the pretext of alleged non-material
28 breaches by the Debtor to further LVDF's scheme to "blame the victim," fail to provide necessary
funding, and then foreclose and take over the Debtor's property and thereby secure a windfall for
LVDF and its principals notwithstanding the fact that LVDF was in material breach of the CLA.

1 For the foregoing reasons, as supported by the accompanying and cited evidence, LVDF
2 materially breached the CLA to the Debtor's substantial detriment, thereby causing the Debtor to
3 suffer damages in an amount in excess of the Claim.

4 C. LVDF Cannot Enforce an Illusory Contract

5 As LVDF has argued repeatedly post-petition, it was free to not loan the Debtor even a single
6 additional dollar even if the Debtor paid all contractual interest, origination fees, and other fees, and
7 even if the Debtor met all of its benchmarks the CLA specified. Thus, as LVDF posits it could
8 refuse to fund after the Debtor spent millions of dollars in pre-construction and grading, and in
9 getting permits, and paying LVDF's affiliate for "marketing" purposes (which funds, on information
10 and belief, were consumed for personal and non-marketing purposes by LVDF's principals) thus
11 leaving the Debtor millions of dollars in debt and nothing to show for it. LVDF contends its
12 purported unilateral right to terminate or modify the contract was subject to no limitations, not even
13 fairness or reasonable notice. Indeed, LVDF realized that it would have been wholly improper to
14 unilaterally terminate the CLA, which is why LVDF created from whole cloth the allegation that the
15 Debtor was in non-material default, namely, in order to hide LVDF's inability to provide the
16 promised and necessary financing to fund the Project.

17 The Debtor submits that LVDF's reading of the CLA renders it illusory. An illusory contract
18 is not enforceable and, therefore on this basis, LVDF may not rely on the CLA to support any aspect
19 of its Claim.

20 D. LVDF Breached the Covenant of Good Faith and Fair Dealing

21 As a companion to the Debtor's argument that the CLA was illusory based upon LVDF's
22 claimed right to terminate the CLA without notice or fairness, the Debtor also claims that LVDF
23 breached the covenant of good faith and fair dealing. Under Nevada law, this covenant is implied in
24 every contract entered into in Nevada (as was the CLA). A breach of the implied covenant has four
25 elements: (1) plaintiff and defendants were parties to an agreement; (2) defendants owed a duty of
26 good faith to the plaintiff; (3) defendants breached that duty by performing the contract in a manner
27 that was unfaithful to the purpose of the contract; and (4) plaintiff's justified expectations were
28 denied. *Perry v. Jordan*, 900 P.2d 335, 338 (Nev.1995).

1 Here, the purpose of the CLA was to fund the construction of the Project that, in turn, would
2 provide a substantial revenue stream to the Debtor, which it would use to repay the CLA and for
3 other business purposes and profits. LVDF, however, was *never* in a position to perform the
4 fundamental purpose of the CLA. At most, it raised less than \$10 million from EB-5 investors and,
5 indeed, it stopped marketing the raising of funds to finance the Project during the course of the CLA
6 and as early as December 2017. Moreover, LVDF used CLA funds improperly for purposes (such as
7 junkets) that did not advance the reasonable business purposes for which the Debtor had paid such
8 funds to LVDF and/or its affiliates. At all material times, LVDF's conduct was unfaithful to the
9 purpose of the contract and grew more unfaithful as LVDF realized it did not have the ability to raise
10 funds and instead turned to seeking to blame the Debtor to conceal its own lack of ability to perform.

11 Accordingly, LVDF breached the implied covenant of good faith and fair dealing thereby
12 causing the Debtor to suffer damages in an amount in excess of the Claim.

13 E. LVDF's Failure to Provide Testimony and Documents in Response to the Debtor's
14 Proper 2004 Examination Subpoenas Warrants Denial of its Claim

15 The Debtor submits that LVDF has the burden to demonstrate the validity of its claim, and
16 LVDF's failure to produce evidence and witnesses in response to the Debtor's properly-noticed 2004
17 examinations should serve as a bar to LVDF's presentation of any evidence to support any Claim
18 against the Debtor or its estate.

19 Notably, the Debtor sought evidence going directly to (i) LVDF's pre-CLA representations
20 regarding its *bona fides*, (ii) LVDF's claim of experience raising funds from EB-5 investors, and (iii)
21 how LVDF used fund received pursuant to the CLA, including, without limitation, for so-called
22 "marketing" purposes. In response, LVDF relied on protective orders it received in the state court
23 action notwithstanding that such orders have no application here for two reasons: First, Rule 2004
24 discovery is much broader than state court discovery, and second, the evidence sought is critical to
25 LVDF's ability to rebut the evidence indicating it breached the CLA and committed fraud. By
26 withholding key documents, LVDF will not be able to meet its burden of proof on these issues.

27 Therefore, LVDF's wrongful conduct for its abuse of the discovery process should result in
28 LVDF being denied the ability to produce now the documentary and testimonial evidence of which it

1 wrongfully deprived the Debtor. Bereft of any such evidence, there is no admissible evidence to
2 support LVDF's purported Claim and, on that basis alone, this Objection should be sustained.

3 F. The Purported Attorneys' Fees and Additional Interest and Foreclosure Fees, All
4 Incurred after LVDF Materially Breached the CLA, are Not Recoverable

5 Nevada law recognizes that a party may not enforce contractual provision where that party is
6 already in material breach of contract. "If there is anything well settled, it is that the party who
7 commits the first breach of the contract cannot maintain an action against the other for a subsequent
8 failure to perform." *Bradley v. Nevada C. O. R. Ry.*, 42 Nev. 411, 421 178 P. 906, 908
9 (1919)(citation omitted); accord *Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 440 F.
10 Supp. 2d 1184 (D. Nev. 2006) (a material breach by one party to a contract may excuse further
11 performance by another party to the contract. The party who commits the first breach of a contract
12 cannot maintain an action against the other for a subsequent failure to perform); *Las Vegas Sands*
13 *Corp. v. ACE Gaming, LLC*, 713 F. Supp. 2d 427 (D. Nev. 2010) (same); *Young Elec. Sign Co. v.*
14 *Fohrman*, 86 Nev. 185, 188, 466 P.2d 846 (1970) (stating that one party's material breach excuses
15 the other party's further performance under the contract).

16 Indeed, an essential element of a breach of contract claim is evidence that the party seeking
17 breach damages demonstrate that it was performing under the contract at the time it claims the other
18 party breached. "When parties exchange promises to perform, one party's material breach of its
19 promise discharges the non-breaching party's duty to perform. *Cain v. Price*, 134 Nev. 193, 196
20 (Nev. 2018).

21 Here, LVDF was in material breach of the CLA before it began alleging non-material
22 defaults by the Debtor. In fact, LVDF's allegations of non-material defaults by the Debtor was mere
23 pretext to deflect from its own material breaches. Moreover, because LVDF was already in material
24 breach, it does not matter whether there were any non-material defaults under the CLA.

25 LVDF's antecedent breaches discharged the Debtor from compliance under the CLA—
26 assuming, *arguendo*, the Debtor was not in compliance. LVDF's antecedent breaches, likewise,
27 foreclose its attempt to recover attorneys' fees, default interest, foreclosure fees, or any of the other
28 fees or penalties LVDF seeks.

1 Moreover, the attorneys' fees sought by LVDF are not recoverable under the CLA (assuming
2 LVDF were in a position to enforce it, which it is not), because such fees were incurred without
3 reasonable purposes (any indebtedness to LVDF was vastly exceeded by the collateral therefor) and
4 were incurred pursuing matters extrinsic to the CLA and therefore not recoverable thereunder,
5 namely, affirmative claims for fraudulent transfer not within the ambit of the CLA.

6 For these reasons, LVDF is not entitled to recover attorneys' fees, and any Claim to which
7 ultimately it may be entitled should not include any attorneys' fees.

8 Moreover, the erroneous and wrongful legal campaign that LVDF prosecuted against the
9 Debtor and its insiders resulted in the Debtor incurring substantial legal fees, all of which amount
10 constitutes damages for LVDF's breach of contract and should be setoff against any Claim by
11 LVDF. As but one example, the fees incurred by LVDF post-petition relating to its attempt to
12 secure a judgment on its claims in the state court action are not recoverable; conversely the Debtor's
13 attorneys' fees expended to set aside actions by LVDF that violated the automatic stay are offsets to
14 any claim LVDF may have.

15 G. LVDF Converted the Debtor's Property by, among other things, Improperly Using
16 Funds for Marketing and Other Non-Authorized Activities, and the Debtor is Entitled
17 to an Offset for those Amounts

18 Conversion is defined as: (a) a distinct act of dominion wrongfully exerted over another's
19 personal property; (b) in denial of, or inconsistent with that party's title or rights therein; and (c) in
20 derogation, exclusion, or defiance of such title or rights. *Evans v. Dean Witter Reynolds, Inc.*, 116
21 Nev. 598, 5 P.3d 1043, 1048 (2000). Conversion involves an act of willful interference, without
22 lawful justification, with an item of property in a manner inconsistent with another's right, whereby
23 that other person is deprived of the use and possession of that property. To be actionable as a
24 conversion, the act must be tortious; that is, an unlawful act or an act which cannot be justified or
25 excused in law. *See Ferreira v. P.C.H. Inc.*, 105 Nev. 305, 308, 774 P.2d 1041 (1989); *Wantz v.*
26 *Redfield*, 74 Nev. 196, 198, 326 P.2d 413 (1958).

27 During the course of their relationship, the Debtor paid LVDF approximately \$522,000 to
28 create the regional center, market the project, and raise the money. LVDF's principal admitted that

1 he spoliated LVDF's financial records. Ultimately, LVDF never produced backup to verify any of
2 its expenditures. Among the documents not provided by LVDF to support its expenditures, LVDF
3 refused to provide (i) an electronic copy of its Quick Books accounting records, (ii) balance sheets,
4 (iii) general ledger reports, (iv) cash receipts or disbursement journals, (v) cancelled checks, (vi)
5 deposit slips, (vii) expense reports or expense reimbursement requests with supporting
6 documentation, and (viii) invoices, receipts, statement, or other documents customarily maintained
7 as support for cash receipts and disbursements.

8 To date, LVDF and its principals have failed and refused to provide any admissible evidence
9 to demonstrate that they used the Debtor's funds for a proper purpose. Because LVDF has not and
10 cannot demonstrate that its expenditures were proper, it must disgorge the \$522,000 of the Debtor's
11 monies it spent, the full amount thereof should be setoff against LVDF's Claim.

12 **V. CONCLUSION**

13 In light of the foregoing facts and circumstances, the Debtor respectfully requests that the
14 Court enter an order providing for the following relief:

- 15 1. Sustaining the Objection and disallowing the Claim in its entirety;
- 16 2. Providing that the Court's ruling on the Objection shall have no preclusive effect on,
17 and is without prejudice to, the Debtor's right to: (a) object to, or seek disallowance of, the Claim on
18 any other grounds as the Debtor may later assert; (b) assert in any venue any claims, demands for
19 affirmative relief requiring an adversary proceeding, counterclaims, rights of offset or recoupment,
20 preference actions, fraudulent transfer actions, or any other bankruptcy or non-bankruptcy claims
21 and causes of action against LVDF; and (c) withdraw without prejudice the Objection prior to the
22 hearing thereon and, in case of any such withdrawal, to assert the same (or other) objections to such
23 Claim in a later objection(s) to such Claim;
- 24 3. Providing that if LVDF files or asserts, or has asserted, any other claim, or an
25 amendment of any proof of claim, related to the Claim addressed by this Objection, then such other
26 claim(s) and/or amendment(s) shall be deemed disallowed with prejudice, and automatically
27 expunged from the register of claims maintained in the Case, without the need for any further action
28 by any party in interest and without the need for any further order of this Court;

1 4. Providing that, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, made
2 applicable in contested matters through Bankruptcy Rules 7054 and 9014, the Court’s ruling on the
3 Objection shall be treated as a final judgment with respect to the LVDF and its Claim subject to such
4 ruling, and determining that there is no just reason for delay in entry of a final judgment on the
5 Claim resolved herein; and

6 5. Granting the Debtor such other and further relief as the Court deems just and proper.

7 DATED: September 29, 2022

BG Law LLP

8
9 By: /s/ Susan K. Seflin

10 Steven T. Gubner

11 Jason Komorsky

12 Susan K. Seflin

13 Jessica S. Wellington

14 Attorneys for Front Sight Management LLC

15 Chapter 11 Debtor in Possession
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**Face Page of Proof of Claim Attachment Pursuant to
Local Bankruptcy Rule 3007(a)(4)**

Fill in this information to identify the case:	
Debtor 1	FRONT SIGHT MANAGEMENT LLC
Debtor 2 (Spouse, if filing)	
United States Bankruptcy Court	District of Nevada
Case number:	22-11824

FILED
 U.S. Bankruptcy Court
 District of Nevada
 8/8/2022
 Mary A. Schott, Clerk

**Official Form 410
 Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	LAS VEGAS DEVELOPMENT FUND, LLC Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom?	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	LAS VEGAS DEVELOPMENT FUND, LLC Name ATTN ROBERT W. DZIUBLA 916 SOUTHWOOD BLVD, SUITE 1G PO BOX 3003 INCLINE VILLAGE NV 89450 Contact phone Contact email Uniform claim identifier for electronic payments in chapter 13 (if you use one):	 Name Contact phone Contact email
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) Filed on MM/DD/YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing?	