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14 **UNITED STATES BANKRUPTCY COURT**  
15 **DISTRICT OF NEVADA**

17 In re:

Case No. BK-S-22-11824-ABL  
Chapter 11

18  
19 FRONT SIGHT MANAGEMENT, LLC  
20 Debtor.

**MOTION TO ESTIMATE CLAIM OF  
LVDF FOR VOTING PURPOSES  
ONLY**

21  
22 Las Vegas Development Fund, LLC (“LVDF”) by and through its counsel, the Law Office  
23 of Brian D. Shapiro, LLC, and Jones Lovelock, respectfully submits its motion to estimate LVDF’s  
24 proof of claim for voting purposes only (“Motion”). This Motion is supported by the following  
25 Memorandum of Points and Authorities, the pleadings filed herein and any oral argument that this  
26 Court may permit.  
27  
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**MEMORANDUM OF POINTS AND AUTHORITIES<sup>1</sup>**

**I. Preliminary Statement**

LVDF’s secured proof of claim has been objected to by the Debtor. By virtue of this Motion, LVDF is requesting this Court to estimate its proof of claim for Chapter 11 Plan voting purposes only in the amount of either \$11,805,706.01 which is the amount the Debtor has allocated in a reserve account for its claim or \$9,741,657.57 which is the amount of the bond that the State Court required the Debtor to post to stay the foreclosure proceeding. Estimation is needed to permit LVDF to vote on the Chapter 11 plan.

**II. Facts**

1. On September 14, 2018, the Debtor filed suit against LVDF, in part, to contest the debt due and owing to LVDF and stop a potential foreclosure action. See generally, AECF No. 1.
2. On April 7, 2022, the State Court entered an order requiring the Debtor to post a \$9,741,657.57 bond to enjoin LVDF’s foreclosure action. A copy of the order is attached hereto as Exhibit 1.<sup>2</sup> Pursuant to such order, the Court calculated such amount as follows:

<u>Description</u>	<u>Amount</u>
Principal	\$6,375,000
Interest	\$1,454,225.18
Late Fees	\$806,314.42
Litigation Costs	\$121,756.15
Attorney’s Fees	\$845,361.82

<sup>1</sup> All references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the clerk of the court. All referenced to “AECF No.” are to the numbers assigned to the documents filed in adversary case number 22-01116 as they appear on the docket maintained by the clerk of the court.

<sup>2</sup> This order was required to be filed by the Debtor within the Adversary Proceeding. A copy of the order is being attached and LVDF requests this Court to take judicial notice of the pleadings on its docket.

<b>TOTAL</b>	<b>\$9,741,657.57</b>
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3. On May 24, 2022, the Debtor filed its Chapter 11 Bankruptcy Petition. See, ECF No. 1.
4. On June 15, 2022, the Debtor filed its bankruptcy schedules in which it stated that LVDF has a disputed unsecured claim in the amount of \$11,027,956.00. See, ECF No. 137, p. 17.
5. On June 23, 2022, the Debtor filed a notice of removal of the State Court Action. See, AECF No. 1.
6. On August 8, 2022, LVDF filed a secured claim in the amount of \$11,655,706.01 plus accruing interest, costs, and attorney fees. See, Claim No. 284.
7. On September 12, 2022, the Debtor filed its first amended disclosure statement which stated that the plan was going to put \$11,655,706.01 in a reserve account to pay LVDF’s secured claim. See, ECF No. 338, p. 12-13.
8. On October 3, 2022, the Debtor filed its second amended disclosure statement which stated that the claim is now contingent and disputed but increased the amount of the reserve to \$11,805,706.01. See, ECF No. 406, p. 12-13. See also, ECF No. 405 (Amended Chapter 11 Plan), p. 7-8.
9. On September 29, 2022, the Debtor filed an objection to LVDF’s claim. See, ECF No. 393.

**III. Estimation Motion**

Neither the Bankruptcy Code nor the Bankruptcy Rules prescribe any method for estimating a contingent or unliquidated claim. The bankruptcy court should use “whatever method is best suited to the circumstances” in estimating a claim. *Bittner v. Borne Chem. Co.*, 691 F.2d 134, 135 (3d Cir. 1982). Therefore, a court has broad discretion when estimating the value of an unliquidated claim. *In re Corey* 892 F.2d 829, 832 (9th Cir. 1989).

1 Section 502(c) of the Bankruptcy Code provides, in pertinent part, that “[t]here shall be  
2 estimated for purpose of allowance under this section – any contingent or unliquidated claim, the  
3 fixing or liquidation of which would unduly delay the administration of the case.” 11 U.S.C.  
4 §502(c)(1). The Bankruptcy Code “requires an estimation in order to prevent undue delay in the  
5 administration of the estate.” *In re Federal-Mogul Global, Inc.*, 330 B.R. 133, 154 (D. Del.2005).  
6 Instructing that any such claims “shall be estimated for purposes of allowance,” section 502(c)(1)  
7 of the Bankruptcy Code “is mandatory, not permissive, and creates in the [bankruptcy] court an  
8 affirmative duty to estimate any unliquidated claim.” *Matter of Pizza of Hawaii, Inc.*, 40 B.R.  
9 1014, 1017 (D. Haw. 1984) (citation omitted); see also *In re Corey*, 892 F.2d 829, 834 (9<sup>th</sup> Cir.  
10 1989) (“Given the highly speculative nature of appellants’ claims, the district court correctly found  
11 estimation to be appropriate. Otherwise, the confirmation of the Louis’s plan would have been  
12 unduly delayed to the detriment of Corey and her real creditors.”); *In re Evans Prods. Co.*, 60 B.R.  
13 863, 868 (S.D. Fla. 1986) (stating that estimation “is the duty of the bankruptcy court”).  
14

15 Here, the Debtor’s Chapter 11 Plan and Disclosure Statement provided a reserve amount to  
16 pay LVDF’s claim in the amount of \$11,805,706.01. LVDF filed a proof of claim of  
17 \$11,655,706.01 plus accruing interest, costs, and attorney fees. The State Court entered an order  
18 estimating LVDF’s claim for the purpose of the Debtor to post a bond at \$9,741,657.57. After  
19 the filing of its amended plan of reorganization, the Debtor objected to LVDF’s proof of claim.  
20 Accordingly, an estimation of LVDF’s claim, for voting purposes only, is required.  
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1 For estimation purposes, the Debtor’s chapter 11 plan states that \$11,805,706.01 will be placed  
2 in a reserve account to pay the debt stated in LVDF’s proof of claim.<sup>3</sup> Moreover, in April 2022,  
3 i.e. over a half year ago, the State Court previously made a judicial determination requiring the  
4 Debtor to post a bond of \$9,741,657.57 to enjoin a foreclosure sale. These amounts, however,  
5 remain below the actual amount of LVDF’s claim as it currently stands, namely **\$12,060,986.84**,  
6 before the September interest, costs and attorneys’ fees that continue to accrue. Despite such  
7 amounts, LVDF is requesting that this Court estimate its proof of claim at either \$11,805,706.01,  
8 the amount of the reserve or as a fallback position, \$9,741,657.57, the amount previously estimated  
9 by the State Court after four years of litigation launched by the Debtor. Such estimate is only  
10 being requested for the limited purpose of permitting LVDF to vote on the Chapter 11 plan.  
11

12 **IV. CONCLUSION**

13 For the reasons set forth herein, LVDF requests this Court to estimate LVDF’s claim for plan  
14 voting purposes at \$11,805,706.01 or as a fallback position, \$9,741,657.57.  
15

16  
17 DATED 10-19-2022

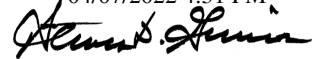
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<sup>3</sup> LVDF contends that interest and fees continue to accrue and such amount in the reserve account does not adequately protect LVDF.

# EXHIBIT 1



CLERK OF THE COURT

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Fund, LLC, EB5 Impact Capital Regional  
Center, LLC, EB5 Impact Advisors, LLC,  
Robert W. Dziubla, Jon Fleming and Linda Stanwood*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

19 FRONT SIGHT MANAGEMENT LLC, a  
20 Nevada Limited Liability Company,

CASE NO.: A-18-781084-B  
DEPT NO.: XVI

21 Plaintiff,  
22 vs.

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW AND ORDER GRANTING IN  
PART AND DENYING IN PART LAS  
VEGAS DEVELOPMENT FUND LLC'S  
MOTION TO DISSOLVE TEMPORARY  
RESTRAINING ORDER**

23 LAS VEGAS DEVELOPMENT FUND LLC,  
a Nevada Limited Liability Company; et al.,

24 Defendants.

25 AND ALL RELATED COUNTERCLAIMS

26  
27 This matter initially came before the Court on January 12, 2022 at 9:00 a.m. on Las Vegas  
28 Development Fund LLC's ("LVD Fund") Motion to Dissolve Temporary Restraining Order on

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1 Application for Order Shortening Time (the “Motion”) and Plaintiffs’ Countermotion to Re-Calendar  
2 the Evidentiary Hearing (the “Countermotion”), with John P. Aldrich, Esq. appearing on behalf of  
3 Plaintiff/Counterdefendant Front Sight Management, LLC (“Borrower”) and Nicole E. Lovelock,  
4 Esq., Andrea M. Champion, Esq., appearing on behalf of Defendants/Counterclaimants Las Vegas  
5 Development Fund, LLC (“Lender” or “LVD Fund”), EB5 Impact Capital Regional Center, LLC,  
6 EB5 Impact Advisors, LLC, Robert W. Dziubla, Jon Fleming, and Linda Stanwood (collectively,  
7 “Lender Parties”). Following the January 12, 2022 hearing, on February 4, 2022, the Court entered  
8 an initial Findings of Fact and Conclusions of Law and Order Granting in Part and Denying in Party  
9 the Motion, granting Lender’s request to increase the bond and requesting supplemental briefing  
10 regarding the appropriate amount of the bond.

11 On January 26, 2022, Lender filed its Supplemental Brief in Support of its Motion (“Lender’s  
12 Supplement”). On February 7, 2022, Borrower filed its Supplemental Opposition to the Motion.

13 This matter came before the Court again on February 10, 2022 on the Motion, with John P.  
14 Aldrich, Esq. appearing on behalf of Borrower and Nicole E. Lovelock, Esq. and Andrea M.  
15 Champion, Esq. appearing on behalf of the Lender Parties. Having considered the pleadings on file  
16 herein, the supplemental briefs, having heard oral argument by the parties, and for good cause  
17 appearing therefor, the Court makes the following Findings of Fact and Conclusions of Law. These  
18 Findings of Fact and Conclusions of Law are meant to supplement the Findings of Fact and  
19 Conclusions of Law from the February 4, 2022 Order (“the February 4, 2022 Order”) and are meant  
20 to be the final disposition of the Motion.

21 Insofar as any conclusions of law are deemed to have been or include a finding of fact, such  
22 a finding of fact is hereby included as a factual finding. Insofar as any finding of fact is deemed to  
23 have been or to include a conclusion of law, such is included as a conclusion of law herein.

24 **FINDINGS OF FACT**

- 25 1. The Findings of Fact and Conclusions of Law from the February 4, 2022 Order stand.  
26 2. Specifically, on October 4, 2016, Borrower executed and delivered a Construction  
27 Loan Agreement (“Original Loan Agreement”) and a Promissory Note dated October 6, 2016  
28



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1 (“Original Note”). The Original Note Loan Agreement and Original Note evidence a loan (“Loan”) made from Lender to Borrower.

3 3. The Original Note was secured by a Construction Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing (“Original Deed of Trust”) dated October 6, 2016, and recorded October 13, 2016, as Document No. 860867, in the Official Records, Nye County, Nevada encumbering certain real property located in Nye County, Nevada (the “Property”).

7 4. On July 1, 2017, Borrower executed and delivered a First Amendment to the Loan Agreement (“First Amended Loan Agreement”) whereby the Original Loan Agreement was amended to reduce the maximum loan amount from seventy-five million dollars (\$75,000,000) to fifty-million dollars (\$50,000,000), among other things. An Amended and Restated Promissory Note (“Amended Note”) and First Amended to Construction Deed of Trust, Security Agreement, and Fixture Filing (“Amended Deed of Trust”) were executed to modify the rights and obligations of the parties. The Amended Deed of Trust was recorded January 12, 2018, as Document No. 886510, in the Official Records, Nye County, Nevada encumbering the Property.

15 5. On February 28, 2018, Borrower executed and delivered a Second Amendment to the Loan Agreement (“Second Amended Loan Agreement”) to allow time for Borrower to obtain senior debt.<sup>1</sup>

18 6. Pursuant to the Loan Documents, Lender loaned Borrower six million three-hundred thousand and seventy-five dollars (\$6,375,000.00).

20 7. Pursuant to the unambiguous terms of the Loan Documents, Borrower was to make full repayment of all amounts due and owing under the Loan Documents on or by October 4, 2021 (“Maturity Date”).

23 8. The Initial Maturity Date, as defined in the Loan Agreement, is “the date sixty (60) months after the first disbursement of funds by Lender to Borrower under this Agreement.”

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27  
28 <sup>1</sup> The Original Loan Agreement, First Amended Loan Agreement, and the Second Amended Loan Agreement shall hereinafter be referred to collectively as the “Loan Agreement”).

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1           9.       The first disbursement occurred on October 4, 2016, making October 4, 2021 the  
2 Initial Maturity Date.

3           10.       The Initial Maturity Date was never extended, thus, making the Initial Maturity Date  
4 the Maturity Date.

5           11.       Borrower failed to pay back the money owed pursuant to the Loan Documents on the  
6 Maturity Date or at any time thereafter.

7           12.       Borrower had been making monthly interest payments on the Loan until September  
8 3, 2021, but no money had been paid by Borrower to Lender since the payment of \$36,604.17 on  
9 September 3, 2021. The parties dispute whether said interest payments satisfy the amount of interest  
10 payments that were due and owing pursuant to the Loan Documents.

11           13.       Following Borrower's failure to repay the loan in its entirety upon the Maturity Date  
12 set forth in the Loan Documents, Lender made demand upon Borrower.

13           14.       Despite the demand, Borrower has not made any additional payment and Borrower's  
14 counsel confirmed during the hearing on the Motion that Borrower did not intend to make any  
15 additional payments until final judgment is rendered in this case.

16           15.       Section 6.1 of the Loan Agreement defines an "Event of Default" as follows:

17                   (a) Borrower shall default in any payment of principal or interest due according to  
18 the terms hereof or of the Note, and such default shall remain uncured for a period  
19 of five (5) days after the payment became due, provided, however, there is no cure  
20 period for payments due on the Maturity Date.

21           16.       Upon an Event of Default, Section 6.2 provides the following remedies for  
22 Lender:

23                   (e) exercise any or all remedies specified herein and in the other Loan Documents,  
24 including (without limiting the generality of the foregoing) the right to foreclose  
25 the Deed of Trust, and/or any other remedies which it may have therefor at law, in  
26 equity or under statute;

27           17.       The Deed of Trust also provides that Borrower's failure to repay the amounts due and  
28 owing on the Maturity Date is "Event of Default" and allows the Lender to foreclose on the Property.

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1           18.     The Court’s November 5, 2019 Order Granting in Part and Denying in Part Plaintiff’s  
2 Second Motion for Temporary Restraining Order and Setting Preliminary Injunction Hearing  
3 (“TRO”) prevents Borrower from conducting a non-judicial foreclosure sale.

4           19.     In filing the Motion, Lender requested that the Court dissolve the TRO and allow the  
5 Lender to proceed with a non-judicial foreclosure of the Property. Alternatively, Lender requested  
6 that the Court set a bond amount for the payment of such costs and damages as may be incurred or  
7 suffered by Lender if found to have been wrongfully enjoined or restrained.

8           20.     Borrower opposed Lender’s Motion and countermoved to continue the evidentiary  
9 hearing on Borrower’s pending Motion for Permanent Injunction.

10          21.     After finding that Borrower’s failure to pay any payments under the Loan  
11 Agreements, and the passage of the Maturity Date, constitute a significant change in the facts  
12 warranting an increase in the bond to secure the TRO, the Parties submitted supplemental briefing,  
13 at the Court’s request, regarding the appropriate amount of the bond.

14          22.     There is no dispute in this case that Lender loaned Borrower the principal amount of  
15 six million three-hundred thousand and seventy-five dollars (\$6,375,000.00) and no amount of  
16 principal has been repaid.

17          23.     Pursuant to the Loan Documents, interest accrues on the loan at 6% during the Initial  
18 Term for all advances made prior to July 1, 2017, and accrues at 7% during the Initial Term for all  
19 advances made after July 1, 2017.

20          24.     If Borrower defaults under the Loan Documents, then the default interest rate applies  
21 at five percent (5%) per annum “in excess of the Loan Rate or the maximum lawful rate of interest  
22 which may be charged, if any.” In another words, 11% during the Initial Term for advances made  
23 prior to July 1, 2017 and 12% during the Initial Term for advances made after July 1, 2017.

24          25.     Lender declared Borrower in default on July 31, 2018. As a result, the default interest  
25 rate has applied since July 31, 2018.

26          26.     The Loan Documents also provide that in the event Borrower fails to make any  
27 required payment of principal or interest payments on the Note, then Borrower shall also pay to  
28

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1 Lender, “in addition to interest at the Loan Rate, a late payment charge equal to three percent (3%)  
2 of the amount of the overdue payment.”

3 27. Attorneys’ fees and costs advance against the Loan and become part of the secured  
4 indebtedness and incur interest pursuant to Section 4.7 of the Construction Deed of Trust, Security  
5 Agreement, Assignment of Leases and Rents, and Fixture Filing.

6 28. Lender has submitted documentation to the Court that demonstrates that the interest  
7 currently due and owing and past due on the Loan is \$1,584,225.18.

8 29. Lender has submitted documentation to the Court that demonstrates that the late fees  
9 currently due and owing on the Loan is \$806,314.42.

10 30. Lender has submitted documentation to the Court that demonstrates that Lender has  
11 incurred \$1,586,967.49 in attorneys’ fees and \$121,756.15 in litigation costs.

12 **CONCLUSIONS OF LAW**

13 1. As addressed in the February 4, 2022 Order, the Court previously DENIED Lender’s  
14 request to dissolve the TRO. Specifically, while the Court does not make any findings about  
15 Borrower’s likelihood of success on the merits of Borrower’s claim, in light of Borrower’s pending  
16 fraudulent inducement claims, the Court finds that the TRO should stay in place.

17 2. The Court does, however, GRANT Lender’s request to increase the bond.

18 3. Pursuant to NRCP 65, “The court may issue a preliminary injunction or a temporary  
19 restraining order only if the movant gives security in an amount that the court considers proper to  
20 pay the costs and damages sustained by any party found to have been wrongfully enjoined or  
21 restrained.” NRCP 65(c). “The expressed purpose of posting a security bond is to protect a party  
22 from damages incurred as a result of a wrongful injunction.” *American Bonding Co. v. Roggen*  
23 *Enterprises*, 109 Nev. 588, 591, 854 P.2d 868, 870 (1993).

24 4. Courts should err on the high side when setting bond. *See Manpower, Inc. v. Mason*,  
25 405 F. Supp. 2d 959, 976 (E.D. Wis. 2005) (“Because the damages caused by an erroneous  
26 preliminary injunction cannot exceed the amount of the bond posted as security, and because an error  
27 in setting the bond too high is not serious, district courts should err on the high side when setting  
28 bond.”) (internal citation omitted); *see also Guzzetta v. Serv. Corp. of Westover Hills*, 7 A.3d 467,

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1 469 (Del. 2010) (stating that district courts should set a bond “at a level likely to meet or exceed a  
2 reasonable estimate of potential damages” to the enjoined party). A wrongfully enjoined party is  
3 “entitled to recover the actual expense and loss occasioned by the writ of injunction[,] [which] would  
4 include the costs of the original proceeding, the reasonable counsel fee paid for setting aside the  
5 injunction, and such other damage as the *natural and proximate consequence of the issuance and*  
6 *enforcement of the writ, and no more.” American Bonding Co. v. Roggen Enterprises, 109 Nev. 588,*  
7 *591, 854 P.2d 868, 870 (1993) (quotation marks and citations omitted) (emphasis in original).*

8 5. The Court shall set the bond consistent at “the actual expense and loss occasioned by  
9 the writ of injunction[,] which [ ] include[s] the cost of the original proceeding, the reasonable  
10 counsel fee paid for setting aside the injunction, and such other damage as the natural and proximate  
11 consequence of the issuance and enforcement of the writ.” *See e.g., Megino v. Linear Financial, No.*  
12 *2:09-CV-00370, 2011 U.S. Dist. LEXIS 1872, 2011 WL 53086 at \*5 (D. Nev. Jan. 6, 2011); see also*  
13 *Renteria v. United States, 452 F. Supp. 2d 910, 922-23 (D. Ariz. 2006).*

14 6. While the bond securing the TRO is currently set at the nominal amount of one-  
15 hundred dollars (\$100), there is a significant change in facts warranting an increase in that bond  
16 amount; namely, borrower’s failure to pay any payments under the Loan Agreements and the passage  
17 of the Maturity Date, both of which constitute a significant change in the facts and circumstances  
18 relating to the adequacy of the bond amount.

19 7. The TRO shall now be secured at a bond amount of \$9,741,657.57.

20 8. The bond amount is calculated as follows:

- 21 a. Principle sum pursuant to the Loan Documents: \$6,375,000.00
- 22 b. Interest: \$1,484,225.18
- 23 c. Late Fees: \$806,314.42
- 24 d. Litigation Costs: \$121,756.15
- 25 e. Attorneys’ Fees: \$854,361.82.

26 9. “The granting of a temporary restraining order without a proper bond is a nullity.”  
27 *State ex rel. Hersh v. First Judicial Dist. Court In and For Ormsby County, 86 Nev. 73, 77, 464 P.2d*  
28 *783, 785 (1970).*



1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Front Sight Management LLC,  
7 Plaintiff(s)

CASE NO: A-18-781084-B

8 vs.

DEPT. NO. Department 16

9 Las Vegas Development Fund  
10 LLC, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/7/2022

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