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Tatiana Sarkisova Firmenich

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEVADA (LAS VEGAS)**

Case No. 22-11824-abl

In Re:

Chapter 11

FRONT SIGHT MANAGEMENT LLC
aka FRONT SIGHT
aka FRONT SIGHT RESORTS
dba FRONT SIGHT FIREARMS TRAINING
INSTITUTE,

**AMENDED
EX-PARTE MOTION TO REOPEN CASE
FOR THE ISSUANCE OF AN ORDER TO
PROVE THAT CREDITOR
TATIANA SARKISOVA FIRMENICH
IS AN INNOCENT INVESTOR**

Debtor(s)

Hearing Date: NA
Hearing Time: NA

TATIANA SARKISOVA FIRMENICH, by and through her attorney Roman V. Gambourg Esq., of the Law Firm of GAMBOURG & READ, P.C., respectfully moves this Court, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure and Rule 5010 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Nevada, for an Order to Prove that Creditor is an Innocent Investor.

This Motion is based on this Motion and concurrently attached Application in Support and evidence appended thereto, the arguments of counsel and other admissible evidence properly brought before the Court at or before the hearing on this Motion.

WHEREFORE, the Debtor respectfully requests that this Court enter an order granting the Motion in its entirety and granting the relief requested herein, in substantially the proposed order attached hereto, and to grant such other relief as the Court deems appropriate under the circumstances.

Dated: December 2, 2024

Respectfully submitted,

/S/ Roman V. Gambourg

Roman V. Gambourg Esq.
GAMBOURG & READ, P.C.
Attorneys for Creditor / Interested Party
Tatiana Sarkisova Firmenich

**APPLICATION IN SUPPORT OF ORDER TO PROVE THAT
CREDITOR IS AN INNOCENT INVESTOR.**

I. Procedural History

Ms. Tatiana Sarkisova Firmenich (herein, Creditor) filed a Petition by Investor to Remove Conditions (Form 1-829) with the U.S. Citizenship and Immigration Services (USCIS) under section 216A of the Immigration and Nationality Act (INA). Petitioner sought the removal of the conditions on her lawful permanent resident status granted under INA§ 203(b)(5).

Creditor's Immigrant Petition by Alien Entrepreneur (Form 1-526) was approved on May 14, 2018.

Creditor's was subsequently granted conditional lawful permanent resident status on September 25, 2018.

Creditor's Form 1-829, petition was filed on September 2, 2020.

Creditor asserted eligibility based on an investment in EB-5 IMPACT REGIONAL CENTER (Regional Center) pursuant to the Regional Center Program.¹ The Form 1-829 and the evidence presented assert that Creditor invested \$500,000 into Las Vegas Development Fund, LLC - the new commercial enterprise (NCE), on September 26, 2016. The NCE proposed to pool \$9.5 million from 19 immigrant investors, and lend the entire amount to Front Sight Management, LLC - the job-creating entity (JCE) - to pool \$9.5 million from 19 immigrant investors, and lend the entire amount to Front Sight Management, LLC for construction and/or operations of an expansion project of an existing firearms range facility that will provide 102 timeshare units and access to 150-pad for Recreational Vehicles (RVs). In addition, the project would develop 28 new training ranges and simulators that would increase the number of students trained per day.

The facility would encompass 85,000 Square Feet pavilion to accommodate

¹ Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended.

classrooms, a 5,000 Square Feet health & fitness center, a 4,000 Square Feet spa & wellness, a 10,000 Square Feet Community Center/Clubhouse, and three-meal restaurant and lounge accounting for 220 seats. Creditor asserted that the JCE is located in Pahrump, Nevada and is principally doing business within a targeted employment area (TEA).

The petition was reviewed for eligibility in accordance with INA §§ 216A and 203(b)(5), and Title 8, Code of Federal Regulations (8 C.F.R.) §§ 204.6 and 216. Based upon a review of the initial record of evidence, USCIS concluded that Creditor had not established eligibility for the benefit sought.

Accordingly, USCIS issued a Request for Evidence (RFE) on August 10, 2023, identifying a number of deficiencies in the following areas:

- Capital at Risk;
- Sustainment of Investment into the New Commercial Enterprise; and
- Job Creation.

On November 7, 2023, Creditor responded to the RFE with the submission of additional evidence.

Following review and consideration of the entire record, USCIS issued a Notice of Intent to Deny (NOID) on February 12, 2024, identifying a number of deficiencies in the following areas:

- Sustainment of Investment into the New Commercial Enterprise.

On March 19, 2024, Creditor responded to the NOID with the submission of additional evidence.

On May 1, 2024, USCIS issued a denial decision based on the following: (Exhibit A)

II. Analysis of the Evidence

A. Sustainment of Investment into the New Commercial Enterprise

The petitioner must provide evidence that the investment into the NCE has been

sustained.² In order to demonstrate that an investment has been sustained, a petitioner must provide evidence demonstrating that they have, in good faith, substantially met the requirement of investing or being actively in the process of investing the requisite capital, as well as evidence to demonstrate that they have continuously maintained the capital investment requirement over the two years of conditional residence. 8 C.F.R. § 216.6(a)(4)(iii).

In order to show that the petitioner sustained the action of investing or being actively in the process of investing the required amount of capital, the petitioner must demonstrate that he or she has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk.

Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. 8 C.F.R. §§ 216.6(a)(4)(ii), (iii); 8 C.F.R. § 204.6U(2). For the capital to be "at risk" there must be a risk of loss and a chance for gain. In addition, as explained in Matter of Izwnmi, the "full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based." 22 I&N Dec. at 179 (emphasis omitted).

Pursuant to USCIS, the petition and supporting evidence failed to demonstrate that the requisite amount of capital had been sustained. In support, Creditor provided the following evidence:

As to the Notice of Intention to Deny (NOID) response:

- Attorney's cover letter for Response to NOID;
- Exhibit 59. Nevada Bankruptcy Court Case Summary and a copy of Voluntary Bankruptcy Petition filed by Front Sight Management LLC, the Job Creation Enterprise;
- Exhibit 60. Article entitled Chapter 11 - Bankruptcy Basics
- Exhibit 61. Pahrump Valley Times January 25, 2022 article entitled Front Sight gun range drops restructure plans 'following outcry ji-om members'

² 8 C.F.R. ~ 216.6(a)(4)(iii).

- Exhibit 63. Pahrump Valley Times November 29, 2022 article entitled Here are the plans for Front Sight firearms facility;
- Exhibit 64. Printout of reviews regarding the JCE posted by customers on www.tripadvisor.com between April 1, 2018 and May 28, 2022;
- Exhibit 65. ABF Journal magazine November 23, 2022 article entitled Bankruptcy Court Approves Prairie Fire's Acquisition of Front Sight Management LLC;
- Exhibit 66. Press Release dated December 5, 2022 from Prairiefire regarding acquisition of the JCE, Front Sight Management, LLC;
- Exhibit 67. Declaration of Robert Dziubla Chief Executive Officer of the Regional Center, EB-5 Impact Capital Regional Center, LLC, and its New Commercial Enterprise;
- Exhibit 68. Copy of the NCE's lawyer's trust account statement evidencing receipt of funds from settlement with the JCE on April 19, 2023;
- Exhibit 69. Copy of Investment Agreement dated January 11, 2024 between the NCE and Alpha Investing LLC, a private equity real estate firm which invests in a range of private real estate assets including senior and single-family housing; and
- Exhibit 70. Printout from Alpha Investing, LLC's, company website at <https://www.alpha.com/>.

As to the Request for Further Evidence (RFE) response:

- Exhibit 12: Copy of UBS Bank Transaction receipt for account ending in 9760Z in the name of the petitioner's spouse, Sebastien Bernard Firmenich, reflecting an e-banking credit transfer on July 1, 2016, in the amount of \$560,000 U.S. Dollars (USO)
- Exhibit 13: Copy of Affidavit from Frederic Vuilleumier, Attorney and Swiss law expert dated September 6, 2016, verifying the lawful source of the investment funds made by the petitioner as a dividend payment from her spouse, Mr. Sebastien Bernard Firmenich's Swiss own company.
- Exhibit 14: Copy of UBS Bank Domestic Payment receipt reflecting the transfer of \$552,500 for the bank account ending in 9796Z of the petitioner's spouse, Sebastien Bernard Firmenich reflecting the transfer in the amount of \$552,500 USO in the petitioner on September 23, 2016 for her investment in the EB-5 Regional Center.
- Exhibit 15: Copy of UBS Bank Transaction Detail dated March 23, 2018 reflecting the Domestic payment transfer of US\$552,500 from the petitioner's spouse's UBS account ending in 9760Z to the petitioner on September 23, 2016.
- Exhibit 16: Copies of the UBS bank statement of the Application's spouse, Sebastien Barnard Firmenich's account ending in 9760Z, for the period July 2016 to September 2016 reflecting the above listed transactions.
- Exhibit 17 Copy of UBS Bank International payment transfer dated September

- 23, 2016 reflecting the transfer of \$552,500 from the petitioner's UBS account ending in 4260X, to the U.S. Bank account of Devore Law Group, P.A. Trust Account held at Sabadell United Bank ending in I 165.
- Exhibit 18: Copy of Sabadell United Bank Incoming Wire Transfer dated September 23, 2016 reflecting the receipt of \$552,500 from the petitioner to Devore Law Group, P.A. Trust Account, account ending in 1165.
 - Exhibit 19: Copy of Outgoing wire transfer of US\$ 500,000 from Devore Law Group, P.A. Trust Account [dated September 26, 2016] held at Sabadell United Bank ending in 1165 to the bank account of Time Escrow, Inc. for investment in the EB5 regional center.
 - Exhibit 20: Copy of Time Escrow, Inc., September 2016 bank statement issues by BBCN Bank, Account ending in# 1510 reflecting the transfer of \$500,000 from Devore Law Group P.A. Trust Account held at Sabadell United Bank ending in 1165 to the bank account of Time Escrow, Inc. on September 26, 2016 for investment in the New Commercial Enterprise.
 - Exhibit 21 -23 Copies of(years 2016-2018) Form 1065, U.S. Partnership Income Tax Return of the EB Regional Center, EB5 Impact Capital Regional Center, Inc
 - Exhibit 24: Letter dated April 13, 2020 from Ken M. Kaslanovitz, Partner, Dentons US, LLC the tax preparer for the New Commercial Enterprise. Las Vegas Development Fund LLC, confining that it is a disregarded entity for tax purposes as it is owned 100% by EB5 Impact Capital Region.
 - Exhibit 25 - 27: Copies of (years 2016 - 2018) Forms 1120S, U.S. Income Tax Return for an S Corporation, of Front Sight Management, Inc, the New Commercial Enterprise.
 - Exhibit 49, Declaration of Robert Dziubla Chief Executive Officer of Regional Center. EB-5 Impact Capital Regional Center, LLC and its New Commercial Enterprise (NEC), Las Vegas Development Fund
 - Exhibit 50. Copy of Promissory Note Between the NCE and Job Creating Enterprise (JCE)
 - Exhibit 51. Copy of Construction Loan Agreement between the NCE and the JCE, with amendments
 - Exhibit 52. Finding of Fact, Conclusion of Law and Order Confirming the JCE's Chapter 11 Plan of Reorganization
 - Exhibit 53. The JCE's Chapter 11 Plan of Reorganization
 - Exhibit 54. The NCE's Motion to Estimate its claim against the JCE before the United States Bankruptcy Court, District of Nevada [October 19, 2022]
 - Exhibit 55. Copy of Supplement to Confidential Private Memorandum Dated July 1, 2016 of Las Vegas Development Fund, LLC
 - Exhibit 56. Investor spreadsheet evidencing the NEC's receipt and refund of investor funds.
 - Exhibit 57. Copy of investor's instruction Letter and Funds Disbursement & Release Agreement, evidencing the Petitioner's decision to sustain her investment in the NCE [May 15, 2023].

Upon review of the evidence provided, USCIS found that the evidence submitted did not address the issue of sustainment of the investment. USCIS contends that the evidence submitted with the 1-829 petition did not substantiate the required amount of capital being placed at risk throughout the sustainment period. Pursuant to the USCIS regulations, the period of sustainment begins at the date of admission as a conditional permanent resident. In petitioner's case, the date of admission is September 25, 2018 with the conclusion of the sustainment period occurring two years later on September 25, 2020. At the time of Creditor's case denial, USCIS records showed there were five 1-829 case filings ranging from May 7, 2020 to September 1, 2021.

Sustainment of investment issues

USCIS considers the immigrant investor to have sustained the actions required for removal of conditions if they, in good faith, have substantially met the capital investment requirement and continuously maintained his or her capital investment over the sustainment period.³ USCIS asserts that during the initial evaluation of the 1-829 casefile, USCIS was unable to determine if investors' funds were sustained during the eligibility period. While the case filing provided financial statements, audits, Regional Center and NCE tax documents as evidence and dated from December 2016 through December 2018, none of the evidence covered the sustainment period of investors conditional residence beyond years 2018. The project started October 2016, and the funds were transferred from the NCE to the JCE during that period. USCIS further review of the casefile, noted that none of the new documentation presented, supported the claim that the sustainment requirement was met.

USCIS further found that the information between the attorney's letter and the Regional Center's CEO declaration letter pertaining to the sustainment issue, was unclear.

³ See 8 CFR 216.6(c)(1)(iii). The sustainment period is the investor's 2 years of conditional permanent resident status. USCIS reviews the investor's evidence to ensure sustainment of the investment for 2 years from the date the investor obtained conditional permanent residence. An investor does not need to maintain his or her investment beyond the sustainment period.

The attorney letter dated March 14, 2024, Section C, page IO said in pertinent part:

“... Moreover, it is important to note that the Petitioner was not the only investor in the NCE and therefore a reasonable explanation to USCIS's query as to "why it is necessary to redeploy funds" may very well be that [the] NCE's other EB-5 investors may need to redeploy funds to meet sustainment requirement. However, this reason is irrelevant as the petitioner did not need to redeploy her/[their] funds in order to meet sustainment requirement. Notwithstanding, the Petitioner providing in response to the NOID evidence that the redeployed [capital] is EB-5 capital within a reasonable amount of time into a qualifying at-risk investment via an investment agreement with Alpha Inv 280 - Buhl, LLC, d/b/a Alpha Investing, a private equity real estate firm providing investors with access to international-grade assets with compelling, risk adjusted returns, which invests in a range of private real estate assets, including multifamily, senior and single-family housing. ...”

USCIS contended that the claim made by the attorney is that the redeployment of EB-5 capital into a private equity real estate firm is irrelevant in this case since the issue is meeting the sustainment of capital investment eligibility requirement. Pursuant to USCIS the funds need to be sustained with the NCE and/or JCE for the immigrant investor to meet the sustainment of capital investment eligibility requirement. USCIS further contended that despite various documents were submitted (such as Journal articles, Trip Advisor reviews posted by customers, a Bankruptcy case summary, and Exhibit documents listed above), to attempt to address the eligibility requirement, none of the evidence supported the claims made by the attorney. Pursuant to USCIS, the casefile and subsequent submission of evidence showed no relevant documentation for the sustainment of the petitioner's investment for the years beyond 2018. According to USCIS, evidence in the record failed to support the claim that the petitioner's capital was sustained through the period of conditional permanent residence ending on September 25, 2020.

Additionally, USCIS asserted that the declaration letter by David Dziubla CEO of EB-5 Impact Regional Center, did not clarify the sustainment of capital from EB-5 immigrant investors. USCIS contends that the CEO's declaration asserted that all remaining immigrant investors' funds were redeployed to a private equity real estate

firm. Pursuant to USCIS, the funds need to be sustained with the NCE and/or JCE for the fulfillment of job creation. Furthermore, USCIS stated that there had been no evidence of sustainment of EB-5 investor's capital in the JCE and/or NCE during the time of financial distress and after the bankruptcy. In addition, USCIS stated that the declaration letter provided no explanation of the reason for or timing of redeployment.

Based on the foregoing, Creditor is an innocent investor who has fulfilled her financial responsibility rules; in all events, Creditor should not be held responsible for the actions committed by Front Sight Management LLC, the Job Creation Enterprise in filing a Bankruptcy action in Nevada under Chapter 11. (Exhibit B – Copy of Voluntary Bankruptcy Petition under Bankruptcy Petition #: 22-11824-abl).

Creditor, who is the recipient of the transfers the Trustee seeks to recover, relies largely on her claim of innocence to the entire investment. If the evidence supported a finding that Creditor was either a regular good faith lender or an innocent investor which was duped along with all the other investors, Creditor may have successfully sought to retain some portion of the transfers under the constructive fraudulent conveyance claims. Creditor which provided moneys as an investment to the Debtor and its affiliates, played a different role than the other investors and was treated differently with respect to how it invested in the business and how it was repaid. Creditor was aware of too many irregularities and red flags to retain the investment the Trustee seeks to recover. Creditor's principal, who had an ownership interest in one of the transferring entities, asked no questions regarding the Debtor's operations. Creditor, was also aware that the Debtor's lines of credit with institutional lenders had been cancelled and still claims it asked no questions. Lastly, Creditor never received any funds back.

As the high court noted, "innocent people are sometimes held liable for fraud they did not personally commit, and, if they declare bankruptcy, § 523(a)(2)(A) bars discharge of that debt.

In the context of a Creditor scheme, whether the receiver [or trustee] seeks to recover from winning investors under the actual investment or constructive investment theories generally does not impact the amount of recovery from innocent investors. In

general, an innocent or “good faith” investor may retain under either fraudulent transfer theory the amount of their initial investment. Thus, they only must disgorge what amounts to “profit” on their investment.

Creditor seeks relief for innocent investors, from pursuing federal securities claims.

WHEREFORE, Movant prays for the entry of an Order to Show Cause granting the relief requested.

Dated: December 2, 2024

Respectfully submitted,

/S/ Roman V. Gambourg

Roman V. Gambourg Esq.
GAMBOURG & READ, P.C.
Attorneys for Creditor / Interested Party
Tatiana Sarkisova Firmenich

LR 9021 CERTIFICATION

In accordance with LR 9021, an attorney submitting this document certifies as follows (check one):

The court has waived the requirement set forth in LR 9021(b)(1).

No party appeared at the hearing or filed an objection to the motion.

I have delivered a copy of this proposed order to all attorneys who appeared at the hearing and opposed the relief, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Dated: December 2, 2024

GAMBOURG & READ, P.C.

/S/ Roman V. Gambourg

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEVADA (LAS VEGAS)**

In Re: Case No. 22-11824-abl

Chapter 11

FRONT SIGHT MANAGEMENT LLC
aka FRONT SIGHT
aka FRONT SIGHT RESORTS
dba FRONT SIGHT FIREARMS TRAINING
INSTITUTE,

Date:
Time:

Creditor.

**ORDER GRANTING CREDITOR'S EX-PARTE MOTION TO REOPEN CASE FOR
THE ISSUANCE OF AN ORDER TO PROVE THAT CREDITOR
TATIANA SARKISOVA FIRMENICH IS AN INNOCENT INVESTOR**

The Court, having reviewed and considered the Creditor's Ex-Parte Motion to Reopen for an order, pursuant to Federal Rule 5010 § 350(b) of the Code and Rule 5010 of the Local Rules of Bankruptcy Practice for the United States District Court for the District

of Nevada, ordering that creditor Tatiana Sarkisova Firmenich is an innocent investor; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing:

IT IS HEREBY ORDERED that the Motion is GRANTED;

IT IS SO ORDERED.

Judge

Submitted by:

GAMBOURG & READ, P.C.

/S/ Roman V. Gambourg

Roman V. Gambourg Esq.
Attorneys for Creditor / Interested Party
Tatiana Sarkisova Firmenich