IN THE SUPREME COURT OF THE STATE OF NEVADA

FRONT SIGHT MANAGEMENT LLC, a Nevada Limited Liability Company,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; and THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT COURT JUDGE,

Respondents,

and

LAS VEGAS DEVELOPMENT FUND LLC, a Nevada Limited Liability Company; EB5 IMPACT CAPITAL REGIONAL CENTER LLC, a Nevada Limited Liability Company; EB5 IMPACT ADVISORS LLC, a Nevada Limited Liability Company; ROBERT W. DZIUBLA, individually and as President and CEO of LAS VEGAS DEVELOPMENT FUND LLC and EB5 IMPACT ADVISORS LLC; JON FLEMING, individually and as an agent of LAS VEGAS DEVELOPMENT FUND LLC and EB5 IMPACT ADVISORS LLC; LINDA STANWOOD, individually and as Senior Vice President of LAS VEGAS DEVELOPMENT FUND LLC and EB5 IMPACT ADVISORS LLC,

Real Parties in Interest.

No.: _____

Dist. Ct. Case No: A-18-781084-B

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PETITION FOR EXTRAORDINARY WRIT RELIEF

PETITIONER'S APPENDIX

VOLUME XIII

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CASE NO. A-18-781084-B

DOCKET U

DEPT. XVI

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

FRONT SIGHT MANAGEMENT LLC,
Plaintiff,
vs.
LAS VEGAS DEVELOPMENT FUND LLC,
Defendant.

REPORTER'S TRANSCRIPT
OF
MOTIONS

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

DISTRICT COURT JUDGE

DATED WEDNESDAY, OCTOBER 9, 2019

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

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* * * * *

LAS VEGAS, NEVADA; WEDNESDAY, OCTOBER 9, 2019

1:27 P..M.

P R O C E E D I N G S

* * * * * * *

THE COURT: All right. Good afternoon.

IN UNISON: Good afternoon, your Honor.

THE COURT: And let's go ahead and place our appearances on the record.

MR. ALDRICH: Good afternoon, your Honor. John Aldrich on behalf of plaintiff.

MS. HOLBERT: Good afternoon, your Honor. Kathryn Holbert on behalf of defendants.

MR. GREER: Keith Greer on behalf of defendants. Also here with Robert Dziubla.

THE COURT: All right. And before we get started, there's one issue I just wanted to kind of address and decide what to do with it.

Mr. Aldrich, I have your ex parte motion for an order shortening time on plaintiff's motion to extinguish the LVDF's deed of trust or in the alternative grant senior debt lender Romspen a first lien position.

And the reason why I'm only bringing it up, what should we do with this? Because this is a motion

for order shortening time. It's my understanding don't we have it pending also? Has it been filed yet?

MS. HOLBERT: It has been filed and, I believe, it was set for hearing on November 5.

THE COURT: That's my question. And so it's like having two -- you can't have two filings. Do you want -- do you want to potentially advance one or what do you want to do?

MR. ALDRICH: I'm not sure what the Court means by I have two files. We filed the motion.

THE COURT: Right.

MR. ALDRICH: And then I sent it down with an order shortening time asking to move the hearing date from when it is set. I don't remember if it was November 5th or the 15th, but it was -- I want to say it was five weeks from when it went out there.

THE COURT: Right.

MR. ALDRICH: So we would like to have it heard sooner than that. We already have a hearing on the 23rd.

THE COURT: Well, that's my question. And we can maybe deal with that administratively now.

And this is kind of -- this is what I do with issues like that. I think -- because one of the things you want to do is you want to make sure you have

consistency.

So once something is set, I don't move it; right? If you want to file a motion to advance it, you can do that. But I think once it's set, I don't think the Court can sua sponte start moving stuff around. I don't do that. I never have.

So -- so the -- and the only reason why I brought it in today, maybe it should be advanced to the 23rd. I don't know. But I don't think an ex -- I think an order shortening time after the fact is kind of having the Court advance the things and move the calendar around, without the input of adverse counsel.

MR. ALDRICH: So is the Court saying that I should move for an order shortening time before I file the motion?

THE COURT: No, it would have -- well, probably because that's how things are typically run, right?

MS. HOLBERT: Right.

THE COURT: You get your order shortening time. I sign it. I give you a date, and we set it. But see, once it's set, it's set.

And I think procedurally the best way to handle that would be like a motion to advance, but since you're here, I said I'd bring it up, and maybe

there's no opposition to just put it -- move it to the 23rd.

MR. ALDRICH: Okay. I just wasn't going to -- the reason I did it that way is because --

THE COURT: Well, it doesn't matter. It doesn't matter.

MR. ALDRICH: I know some things changed, but what I've had happen is when I sent down an order shortening time and the motion hadn't been filed yet, it gets sent back to me saying send me a file stamped copy. Well, when I do it, I guess, maybe what I need to do is not request a hearing when I file it.

THE COURT: Right. Yeah.

MR. ALDRICH: Okay. So I'll do that in the future. That's fine.

I mean, certainly I'd love to have it heard on the 23rd. It was filed last Friday.

THE COURT: Is there any opposition to that?

MR. GREER: Your Honor, we do. We're going to need time to respond. This whole thing with now the timing -- like our motion is due ten days after you get them or 14 days?

THE COURT: Ten days.

MS. HOLBERT: Right. And it's ten straight days now, which makes it, you know, like, five

calendar -- five business days.

MR. ALDRICH: Which makes it due next Monday.

THE COURT REPORTER: I need one at a time.

THE COURT: One at a time.

MR. GREER: So Monday is a Court holiday, so due Tuesday; right?

MR. ALDRICH: If Monday is a Court holiday, then it would be Tuesday.

THE COURT: So next Tuesday as well.

(A discussion was held off record.)

MR. ALDRICH: I don't think that's a state court holiday.

MR. GREER: Not here in Nevada. So we're going to be jammed.

THE COURT: So if it's due on the 14th, why couldn't we hear it the next following week?

MR. GREER: Here's -- I may have a conflict, your Honor, is a problem. We'll be starting trial on the 15th. And so the 23rd is going to be a challenge for me. The 5th I should be done by. That's an important motion.

Your Honor, also it's -- that should be --

THE COURT: But, you know what, this is why I do everything in open court. Right?

MR. GREER: Right.

MS. HOLBERT: Right.

MR. GREER: Here's -- we think that this really is relevant to the pending motion to appoint a receiver, and for relief from the preliminary injunction. And so we'd actually like to have that resolved relatively quickly.

I'm just concerned the 23rd is not going to work for me.

MR. ALDRICH: We have two hearings set on that day already.

MR. GREER: So is that -- those are -- what do we have, motion to squash?

MS. HOLBERT: I think motion for sanction, motion to compel; right?

MR. ALDRICH: That's right.

MR. GREER: So that would be --

MS. HOLBERT: Yeah, well --

(A discussion was held off record.)

MR. GREER: I won't know until Friday when the Court -- we have trial call. And when the Court sets this up.

And then I may be fortunate to get a courtroom to start on that date for trial, in which case I'm -- I don't have to even worry about, but I don't know until Friday.

THE COURT: Okay. Should we go back on the record?

MR. GREER: You want to put it on the 23rd? And -- because if I'm going to have to move, I'm going to have to move everything.

THE COURT: How about that, Mr. Aldrich?

MR. GREER: Yeah.

THE COURT: We'll just put it on the 23rd. And if -- we'll know Friday if it has to be moved or not. If it has to be moved because of trial and that that type of stuff, we will just move it.

MR. ALDRICH: So I have no problem with the 23rd. That's great. I just want to point out, and I -- I understand Mr. Greer's schedule, so -- and I understand how that works because I have the same issues sometimes.

THE COURT: Yes.

MR. ALDRICH: But I just want to note that the Court has expressed concern that this is taking a long time and has expressed a desire to have us try the case in January or thereabouts, which I'm sure we'll talk about in a minute.

THE COURT: January or February. Sometime after the first of the year.

MR. ALDRICH: Sooner than October or whatever

it's set for.

THE COURT: Yes. It could be June maybe, but sooner than October.

MR. ALDRICH: That would still be a lot sooner.

THE COURT: Yes.

MR. ALDRICH: I just want to make sure that there's an understanding here that these are important motions for me and for getting discovery that are going to be heard on the 23rd. So I understand if they have to get moved, they have to get moved. But that cannot count against me as we're trying to move forward.

MR. GREER: Your Honor, he's already got two months against him. I'll take a week.

THE COURT: All right.

Mr. Aldrich, I don't think -- I can't think of any reason why I would count that against you. I mean, really. I mean, because this case -- let's keep it how it is.

This case is very unique. There's a lot of unique issues. We're in a very unique procedural posture. We can all agree; right?

And I can't sit back and say anyone involved in this litigation has even a scintilla of dilatory conduct. In fact, it's been very aggressive, you know.

So that's a nonissue. It really isn't.

So -- but just as important, too, historically, I do get that we can't circumvent due process. I understand that aspect too.

All I'm trying to figure out on some level, efficiency; right? That's, really and truly, what it all comes down to. Because we have spent a lot of time together. I can't think of any case I've ever had other than -- I mean, yeah, I have had some complex cases that have gone to trial where we've had maybe a month of pretrial motions. I've had that in a few cases.

But I can't think of any cases where I've had -- and this isn't meant in a negative way -- where I've had prolonged serial law and motion like I have in this case. If you understand what I mean.

MR. GREER: Yeah. So we have no objection putting it on the 23rd.

MR. ALDRICH: Okay.

MR. GREER: And hopefully we can get here on the 23rd.

THE COURT: Yeah.

MR. GREER: We'd like to have this heard as quickly as possible.

THE COURT: Okay. That's what we'll do. You

can see why I handled it the way I do handle it. And I kind of do that because it just seems to me from a judicial philosophical perspective, I do -- I do everything in open court, even when I have unopposed motions. I don't grant anything until I'm in open court. I find that that saves time. It just does.

And think about it, I just saved a lot of time here today by handling it the way I did.

MR. ALDRICH: And I -- my client appreciates it and we appreciate the accommodation to have it heard on the 23rd.

THE COURT: Right. Right. So what we'll do then, and I just want to make sure we have the -- because this has been filed, it's my understanding. And what date is that set for?

MS. HOLBERT: Your Honor, I just double-checked. It actually was set for 10-13.

MR. ALDRICH: 11-13.

MR. GREER: 11-13.

MS. HOLBERT: 11-13, sorry.

THE COURT: 11-13. Oh, yeah, there you go.

So what we'll do as far as plaintiff's motion to extinguish the LVDF deed of trust, et al, we'll go ahead and we'll move that to the 23rd. And what we'll do today if you remind me, we can have a status check,

say maybe Friday 1:00 telephonically, just to see where you're at and you can let us know. And we can handle it that way. That way we don't have to -- we want efficiency.

MR. GREER: Very good.

THE COURT: That's all I'm looking for. But remind me to set -- maybe we'll set that right now before we forget.

What do we have Friday? We're in trial; right?

THE COURT CLERK: Starting at 9:30, all day.

THE COURT: Okay. What do you -- what would be a good time to have a telephonic status check on that?

MR. GREER: Probably late afternoon. In Los Angeles, you go on the wheel, you don't know where you're going to wind up. It takes sometimes the better time of the day to get a Court.

THE COURT: Would 4:00 o'clock be safe?

MR. GREER: 4:00 would be fine.

MR. ALDRICH: I'm around, that's fine.

THE COURT: And you don't have to come down for it. We'll have you call in on CourtCall.

MR. ALDRICH: Sure.

THE COURT: Because I should be on day two in

jury selection at the time.

So we'll put that at 4:00, and we'll put it on calendar. And so what we'll do is -- do we have the CourtCall information?

THE COURT CLERK: We do.

THE COURT: We'll use CourtCall. We'll make sure you get copies of everything.

MS. HOLBERT: Thank you.

MR. GREER: Your Honor, just a question on that, then, too, because right now I don't know if the Court -- is the Court planning on ruling today on the pending motion for receiver and relief from the preliminary injunction? Because if the Court isn't, I think that the issues that are presented here with this alleged any financing and the concessions that Front Sight is asking LVD Fund to make and to make this happen, it all -- we believe it ties together and supports the need for a receiver. So what I'd like to ask is that -- we put that on calendar for -- maybe for further hearing. Would that work? On the 23rd?

Unless the Court is prepared today to say, Yes, let's put a receiver on board, in which case we won't need it.

THE COURT: Mr. Aldrich?

MR. ALDRICH: I mean, we are -- we argued the

motion for receiver already, but --

THE COURT: Maybe there is something I need to hear in your motion that would help guide me.

MR. ALDRICH: I mean, we're going to be here. So, I guess, I would call it a soft objection, but really what is it? If it's going to come up anyway, it's going to come up, anyway. So I'm here.

THE COURT: I'll delay -- I'll defer the ruling until after I hear your motion.

MR. ALDRICH: Okay.

THE COURT: Is that what you want, sir?

MR. GREER: Actually after you hear our opposition.

THE COURT: Yeah.

MR. GREER: Because --

THE COURT: Motion and opposition. And we'll just move it to that day so you don't have to be here.

MR. ALDRICH: There is not necessarily opposition maybe.

(A discussion was held off record.)

MR. GREER: Yes, your Honor.

THE COURT: Sir.

MR. GREER: Just -- was the Court going to issue a ruling today on that?

THE COURT: No.

MR. GREER: Good. Thank you.

You're in hot water.

THE COURT: No. All right.

This is the case that keeps on going.

So where do we need to continue from? Where do we start off at?

MR. ALDRICH: Today we have defendant's motion to bifurcate. We have -- both sides have motions to quash subpoenas to third parties.

We've got a discussion of the Rule 65(a)(2) notice. And a supplemental Rule 16 conference, I guess, related to the counter-defendants.

MS. HOLBERT: Yeah. And there is actually a status check regarding setting continued preliminary injunction hearing.

THE COURT: There's a lot.

MS. HOLBERT: But all of that relates to calendaring things.

THE COURT: Yes.

MR. ALDRICH: So there was some discussion among counsel before. There was some concern about how long those subpoena -- motions to quash the subpoenas may take.

So if it pleases the Court, we can start with the motion to bifurcate and then have a discussion

about the Rule 65(a)(2) notice. And then handle the rule -- supplemental Rule 16 conference before we do the motions to quash.

Does that seem fair?

MR. GREER: Yes.

MS. HOLBERT: Yeah.

THE COURT: All right. That's what we'll do.

And that's for Friday at 4:00. That's the CourtCall instructions so both of you have that.

MR. GREER: Thank you.

THE COURT: So we're dealing with the motion to bifurcate right now; is that correct?

MR. ALDRICH: Yes.

MR. GREER: Yes, your Honor.

THE COURT: Okay. I got you.

(Brief pause in proceedings.)

THE COURT: I'm ready when you are.

MR. GREER: Yes, your Honor.

THE COURT: Yes.

MR. GREER: Our argument here, your Honor, very short, concise. We've laid it out in our papers. I have little to add.

This case involves two separate contracts: The February 2013 engagement letter, the October 2016 construction loan agreements.

Different parties involved with each. The loan agreement involving Las Vegas Development Fund solely. EB5 Impact Capital Advisors being the principal defendants in the engagement letter case.

So we have different contracts. Different parties. Because of the contractual provisions of the construction loan agreement, all issues relating to that are to be heard by your Honor as both parties waived jury.

Conversely, there's no such provision in the engagement letter. Remember the engagement letter involves allegations of fraudulent inducements, misrepresentation -- misspending of funds, misallocation of funds, et cetera; whereas, the construction loan agreement very, very simple. Borrower lender arrangement.

Las Vegas Development Fund got the money to Front Sight. Front Sight breached every single provision as we've laid out in the construction loan agreement, including the monetary breaches. We just gave your Honor today supplemental notice of default. Notice of default that was filed by Las Vegas Development Fund to -- sent to Front Sight a few days ago confirming that they are, again, in monetary default for failing to make the interest payment for

this month.

We have EB5 investors that are involved in the construction loan case. Time is of the essence for them. You know, this process is set up so that lenders that are secured and construction loans can quickly resolve the matter and not be dragged out, all the typical type of things that distract the litigants in traditional business litigation.

By bifurcating the two cases, we allow the construction loan case to go forward quickly, hopefully winding up eventually with relief from the preliminary injunction and a nonjudicial foreclosure, or in the alternative, perhaps at this time the loan -- proposed loan agreement with Front Sight is actually real. Perhaps a resolution of the case between the parties, but either way it just makes sense to bifurcate at this point in time.

The key element the Court, I think, should consider that was attached as Exhibit 1 to my declaration is the May 12, 2016, email from Robert Dziubla to the principals at Front Sight, laying out, saying, Hey, we're not going to make the amounts of money that was anticipated. 70 million is not going to come. 50 million is not going to come. We have a decision to make now. Do we walk away from each other?

Give the money back to the investors? Do we sell the resource center to you, you go on your own? Or do we get rid of the limits that were set previously and let's just lend the money that is there and move forward knowing that the expectations from the past are not going to be met.

At that time Front Sight decided to go forward. That is the perfect place to put the dividing line between these two cases. From that point forward, there are no misrepresentations even alleged because all of the statements in the past about what was going to be achieved and what money was going to be raised ended as of May 12, 2016. The parties went through with no expectations at that point in time.

Just knowing that LVD Fund was going to lend the money. Front Sight was going to be the borrower. And from that point forward, the monies that were going to be paid to LVD Fund for raising the funds were going to be progress payments, such that whenever LVD Fund was able to get an investor to put money into the escrow. When that money was released from the escrow to Front Sight, Front Sight would pay the fee.

That was it. It was a paid-in-place situation at that point in time. And there's just the two very, very distinct cases, different lives and different

interests in both sides. And the compelling interest here is that the construction loan agreement is just that: A construction loan agreement to -- it involves EB5 investors where time is of the essence.

Remember, the completion date for this project was October 4. So we're now done with the project. We're done with -- the time to complete it is done. And according to Mr. Piazza's testimony on the stand, they haven't even prepared plans for the vertical structures.

So we really need to get things rolling on the construction lending side and not with these EB5 investors in jeopardy.

I will note that the case, Mr. Aldrich brings it up, Front Sight has brought forth some hearsay evidence recently alleging that there have been enough jobs created already, such that EB5 investors don't matter. They should be filing their papers now.

Well, looking at the law, this is what we don't allow hearsay where hearsay shouldn't be allowed. The problem there is that there's a fundamental fact that Mr. Evans, Front Sight's economist, relied upon, which doesn't exist here. And that is the only way that Front Sight can get credit for jobs created from the date they chose, which was the date of the

engagement letter back in 2011, is if there was a bridge loan.

A bridge loan is used to create the jobs and do the construction prior to the time that the EB5 monies is received. The builder, the investors, can get credit for that. There is no bridge loan here. There's no evidence of a bridge loan, and that's why the economy -- the economist report from Mr. Evans is just worthless in this case.

So it's ridiculous to think that if the EB5 investors were in a situation where they could get their cards, they would have done so already. Mr. Dziubla, that his responsibility to say on top of that; the investors' responsibility to file the paperwork. But there's just no evidence before the Court that's admissible that supports Front Sight's contention that EB5 doesn't matter anymore.

THE COURT: Thank you, sir.

MR. ALDRICH: Good afternoon, your Honor.

I also set forth my position in the pleadings, and I'm sure the Court has reviewed those. I've got a couple of comments based on what Mr. Greer said, and I'll highlight some of the things in my brief.

The first is, is that Mr. Greer made the statement today that Front Sight had not made its

payment for October. I did not ask my client for proof of that today, and I can get it if I need it, but my understanding is the payment was made for October.

MR. GREER: Hold. Time out. Time -- now, your Honor. I misread -- I misread the record. They have -- they made the regular interest. They didn't make the default interest.

MR. ALDRICH: Okay.

MR. GREER: I stand corrected. Stand corrected.

MR. ALDRICH: There we go.

THE COURT: And I understand that's in dispute.

MR. ALDRICH: Correct. The default interest amount is in dispute.

And I will note at the last hearing we asked for the calculation of the default interest and hadn't received it. I've sent two emails and made a phone call -- actually Mr. Greer called me. We talked about it. And today I still don't have it. I have no calculation of what that default interest is. I asked for June, July, and August, and I don't have it.

So, anyway, it goes to a lot of other things we've been asking for, but we'll talk about that on the 23rd.

Pursuant to NRS 239.053, illegal to copy without payment.

Now, with regard to the motion to bifurcate, for good reason the defendants are asking the Court to ignore the fraud allegations. There's a good reason for that. Because there isn't -- there aren't two distinct agreements here. I mean, there are two agreements, but they're not unrelated. They're absolutely related.

Mr. Greer says they're separate parties, except that Mr. Dziubla owns -- he's the CEO and owner of all the entities involved. EB5 IA, EB5 Impact Capital, the regional center, Las Vegas Development Fund, he's the underlying piece.

Interestingly enough, we have -- while I'm still going to continue to complain that I don't have all the evidence I need from the other side, we do have some testimony because we've been here several days. Among the things that Mr. Dziubla said was that once the construction loan agreement was signed, Las Vegas Development Fund assumed primary role of marketing, but the problem with that is that he continued to take money from Front Sight through EB5 IA, the alleged marketing entity, for a long time after October of 2016. Well, then we also learned that Mr. Dziubla stopped marketing the project all together at the end of 2017, yet continued to accept tens of thousands of

dollars from Front Sight allegedly for marketing well into 2018.

How is that not continuing fraud? And that -- I mean, I could go on, but that's -- that's the easy low-hanging fruit.

We also heard from Dr. Piazza when he was here to testify about this May 12 of 2016 email that the defendants point to as being the smoking gun, except that Dr. Piazza explained what happened there.

They had a meeting a few days later. Mr. Dziubla and Mr. Fleming came hat in hand looking like homeless people begging for more money and saying, We need to remove the minimum raise, but once we do they're all lined up. We're ready to go.

That's additional fraudulent inducement well beyond that May 12 of 2016 email.

I could go on. I won't belabor it too much right now, but those facts show that this is a continuing fraud.

Now, there are the causes of action. The plaintiff has causes of action for fraud and intentional misrepresentation, conversion, civil conspiracy, breach of contract, breach of the implied covenant of good faith and fair dealing, intentional interference with prospective economic advantage, and

negligent misrepresentation. There are also counterclaims that are for intentional interference with contractual relationships, conversion, civil conspiracy, judicial foreclosure, and waste.

Now, I've walked through in my brief and talked about bifurcating the claim. It's our position that bifurcating this case is going to cause essentially two trials to happen, duplicative evidence, all those different things. However, if the Court wants to bifurcate this trial and it chooses to do so, I've also outlined exactly how that has to go.

The fraud in the inducement claims have to go first. Because that would -- if the contract is deemed void, rescinded, whatever it turns out to be because of the fraud in the inducement, all the rest of the claims go away and the Court doesn't have to try the rest of the case.

I walked through --

THE COURT: So what you're saying is this. You're saying, Look, Judge, if there's fraud in the inducement, there can't be a breach of the construction loan agreement.

MR. ALDRICH: Correct.

THE COURT: I understand.

MR. ALDRICH: And so if there's going to be a

bifurcation, those have to go first.

Then if the Court finds that there's not fraud, then we can fight about how the agreement went down and who's in breach and all those different things. And I walked through these cases.

THE COURT: And I want to make sure I'm clear on this. Are there any remaining equitable claims?

MR. ALDRICH: That's a good question.

Because -- I don't think I have a second amended complaint with me.

We certainly have -- could amend once we have all the evidence, too, to assert some equitable claims, rescission, or something like that. As I stand here today, your Honor, I can't remember if we have an asserted rescission as a possible remedy in the second amended complaint. I don't remember.

But certainly the fraud claims are either common law based. I think they're probably ripe for a jury. I will say this, there is --

THE COURT: And you know why I asked that question, because if it's at law, the jury decides, or the ultimate fact finder.

MR. ALDRICH: Correct.

THE COURT: If it's an equitable claim, the trial court decides.

MR. ALDRICH: The Court does. I understand that.

We do have, I guess, an issue as to whether a jury is appropriate here or not. The construction loan agreement says that there's a waiver of that jury trial. The defendants actually filed a request or demand for jury trial. And when they did, so did we.

And so, I mean, our position, I guess, would be with those claims that are appropriate before a jury, they should be put there because they've been waived, or that that waiver of a jury trial regardless has been waived because the defendants filed a demand. We filed it too.

THE COURT: That's an interesting issue.

MR. ALDRICH: It is interesting.

THE COURT: Before I comment on that, before I make a decision, unless there was an agreement, I'd ask for full briefing on that because that's a fascinating issue.

MR. ALDRICH: And your Honor probably doesn't remember because this was a long time ago, but I argued this issue in front of the Court many years ago on another trial I had in front of the Court. And that's what the Court made us do in this instance as well.

THE COURT: I never rush to judgment,

Mr. Aldrich.

MR. ALDRICH: Understood. I -- it came up, so I just raised that issue.

THE COURT: Yeah.

MR. ALDRICH: But --

THE COURT: Well, at least I'm consistent; right?

MR. ALDRICH: That is correct.

THE COURT: Yes.

MR. ALDRICH: But the bottom line, back to the motion to bifurcate, I cited the Awada case. I walked through that. I won't read the Court the quotes, but it makes it pretty clear fraud in the inducement comes first. The only case that was cited by defendants in their brief was a federal court case. And they -- they did bifurcate in that, but they bifurcated fraud claims related to a separate sales agreement versus the other issue involved.

So in this instance, as I said before, it's really one continuous fraud, and it should be tried -- really it should be tried together. But if the Court is going to bifurcate, the fraud claims should go first.

Does the Court have more questions for me?

THE COURT: No, sir.

MR. ALDRICH: All right. Thank you for your time.

-o0o-
(Recess)
-o0o-

THE COURT: All right. Mr. Greer.

MR. GREER: Yes, your Honor.

Mr. Aldrich stated that this is an ongoing continuous fraud because -- in part because Las Vegas Development Fund continued to accept money for marketing, even after May 2015.

But what is disingenuous about that is prior to May of 2016, monies coming from Front Sight were given to EB5 Impact Capital Advisors in order to do specific things like set up a resources -- a regional resources center, set up a team of brokers and agents, establish the infrastructure for EB5 fundraising operations.

After May 2012 the rules changed because there's a new agreement, and the agreement at that point in time is there's no money given, just checks cut over to Las Vegas Development Fund with them having the discretion to then go out and spend it on marketing and then, you know, report to Front Sight in someway.

No, at that point in time Front Sight said, In light of the fact that we're not going to make all the

money that we thought we're going to make sure, I guess haven't achieved the goals that we were aspiring to, from now on out, we're not going to pay up unless you give us money.

And so at that point in time, after the May 2016, every bit of money that Mr. Piazza and Mr. Aldrich are saying were for marketing, that was for performance. Checks weren't given to -- if there were some given to the Capital Advisors and Impact Advisors; some were given to LVD Fund. But they were all after monies were released from escrow to Front Sight, then the performance payment was given.

So that's -- that's, again, a reason to bifurcate because there is no issue of how that money was to be spent. Front Sight had no control over how that money was to be spent. Las Vegas Development Fund had no obligation to tell Front Sight how it was spending that money. All that Las Vegas Development Fund had to do was go out, get capital, give it to Front Sight, and get paid for doing so.

So it also shows how it's disingenuous to say that Front Sight -- that LVD Fund stopped marketing at that point in time because LVD Fund kept getting capital, knew EB5 investors were coming in. They were putting their money in the escrow, and that money was

being given to Front Sight. Front Sight, then, in return paid the progress payments, the performance payments.

So, again, very, very separate and distinct contract, separate and distinct relationship.

This argument coming up, again, about some fraud in the inducements, alleviating Front Sight from the obligation to pay the loan. I still have yet to figure out how that fits in. I don't think fraud in the inducement is going to be any legal basis to not pay the interest and be -- and comply with the construction loan because it's the EB5 investor's money. They are the persons who are putting up the capital. They're the ones that need to be protected here. They're innocent third parties, and we know that. We've supplied the Court with the law. This unclean hands doctrine does not apply to this situation where to do so would affect innocent third parties.

Lastly, on the issue of the jury, we put up -- we did a jury demand just to protect the rights, the ability to do so later. We still have the ability to waive that, I believe, and withdraw it.

THE COURT: What's the impact for the construction loan agreement and the provisions pursuant to the contract where there's a waiver of the right to

a jury trial? I mean -- and understand, that's not being briefed today. I'm not going to decide that issue.

But here's my thought. And one of the things as a trial judge -- and, I mean, I don't know where we're going to, ultimately, end up with this case, whether it's going to be a bench trial, jury trial, or whatever. I mean, I don't know because it hasn't been fully vetted and briefed, and I will not decide that issue until I'm sure; right? And that's how I do it.

But one of the things I always contemplate and I spent a lot of time on -- for example, tomorrow we're having a jury come in; right? We'll have about 100 panel members. And I actually conduct a very extensive voir dire of the panel. And there's -- there's two focuses for me. And one is I just want to make sure the jury understands why they're there; right? And I go through this whole litany of discussions regarding the history of this nation.

But I have another series of questions regarding the process itself. And the -- and I want to make sure the jury will follow the instructions of the Court, even if they disagree. Right? Because it's very important we don't have jury nullification.

But there's another focus I give, and it's on

the "you can't rush to judgment," and it's so, so important. It really and truly is. Even as a trial judge, I have to sit back and make sure I hear all the facts and those types of things. Because when I explain to the jury the protocol of how the trial will proceed, and, you know, you can't even make your decision until at the very end when you have the instructions, and you've listened to all the evidence, and that's when you deliberate.

And so in this case I can't rush to any conclusion; right? And here's my point. For example, we still have a pending fraud in the inducement claim; right? Still there. And so with that in mind, how can I decide the breach of the construction loan separately? And before but not at the same time that the fraud, the fraud in the inducement claims, are being decided?

MR. GREER: We agree, your Honor.

THE COURT: You see where I'm going on that?

MR. GREER: Absolutely. Absolutely. Because in both case --

THE COURT: Yes.

MR. GREER: -- after you bifurcate, there is -- if there is a surviving fraud in the inducement claim, it has to be heard first on both cases.

THE COURT: Right.

MR. GREER: The difference here is one -- two things. One with regard to the jury question, your Honor, which applies to this, when we -- when we demand a jury, remember there are cases -- there are claims in the complaint that have nothing to do with the construction loan agreement.

The Impact Advisors allegations, we have people that aren't parties to the construction loan agreement, so that jury demand is two things that can be tried as to a jury. Even though we've requested a jury, we can't try the equitable claims that are in there.

THE COURT: We can all agree on that. Absolutely.

MR. GREER: Right. And you know what, your Honor, we can't do the contract either. That's -- if there are claims in the complaint which should not be heard by a jury, then the jury demand doesn't all of a sudden make them able to be heard by a jury demand -- by a jury. So it's -- I would say that the contract claims and the equitable claims will be handled similarly. And we have to include it as a demand because there are all kinds of causes of action in there involving claims and parties that aren't related

to the construction loan agreement.

So with regard to the fraud in the inducement, I think on the bifurcation case, you would hear the fraud in the inducement claims first.

But I think why this makes this such a quick trial and allows us to move quickly on the loan agreement is once the evidence comes forward here, what are the allegations that you say were made that you relied upon in fraud and fraudulently induced you to enter into a construction loan agreement, well, because of this email in May of 2016 where everybody agreed, not going to go bring in 50 million, not going to bring in 75 million, not going to bring in 35 million. We have millions in the bank. That's it. Let's decide what we're going to do.

There is just no fraud in the inducement evidence that goes into the bifurcated trial for the construction loan agreement.

And they can't in good faith say that, I believe that they were going to make this 75 million and that's why I entered into the construction loan agreement, because right there in May of 2012 they all agreed it wasn't going to happen.

So any of the fraud in the inducement claims would end at that point. And I think that issue should

be tried and the bifurcated case involving the construction loan agreement, it will just be a very quick, short part of the trial. And it will be heard by your Honor because that relates to the construction loan agreement, which all the parties have waived jury to.

So I think that even though fraud in the inducement will be heard first, it will be dealt with in short shrift in the loan agreement case; whereas, it will be the primary focus and a very lengthy process in the engagement letter case.

THE COURT: Okay. What do you think about that, Mr. Aldrich? What do you think? Because --

MR. ALDRICH: Well --

THE COURT: -- it does appear to me -- and I understand I haven't been fully briefed on it. Typically we do briefing on this issue. But the fraud has to have some sort of an impact; right?

MR. ALDRICH: It has to what? I'm sorry.

THE COURT: It has to be an impact on how the case proceeds procedurally.

MR. ALDRICH: Yes.

THE COURT: As long as it's a viable claim.

MR. ALDRICH: Yes.

THE COURT: We can all agree with that; right?

MR. ALDRICH: Yes.

THE COURT: So I think what Mr. Greer was saying -- and, of course, I know you don't agree with this aspect of it because I was going to say. I guess, he's kind of agreeing that maybe the fraud would have to be tried at the same time of the construction loan agreement case. You don't agree with that. I think you probably disagree with the time it would take to try that component, I understand that, but what's your take on that?

MR. ALDRICH: Well, my take on it is as I said before. This is one scheme and it has gone on through -- we can say it's through two agreements. But remember what Mr. Dziubla has said about -- during the testimony. Now I am going off of memory, and I can pull it out and look at it if I -- if it turns out that defendants disagree with what I say. But I've already said one thing, which was he said that LVDF, Las Vegas Development Fund, took over the marketing for EB5 IA once the agreement was signed.

Well, that's -- that's not consistent with the money that he took and the way things were done. He shut -- he also said that the engagement letter was extended by gentleman's agreement until he decided to do away with it. Well, those are -- how does that

work?

I mean, there are -- all of these things are so intertwined, I think it's difficult to separate them. But nonetheless, you absolutely have to do the fraud issues first regardless, and I've already kind of gone through today what those issues are, even related to the CLA, to the construction loan agreement, if the Court decides to bifurcate those issues. But this is a -- this is an ongoing fraud over a long period of years.

And I will remind the Court in making this decision right now, please remember, I have a motion -- we're -- still haven't talked about the subpoenas. I'm asking for bank records. Why? Because my client has given over $500,000. When the Court ordered an accounting from EB5 IA, we got some documents. Okay.

I've got an accountant waiting for more documents, and he can give us a report. And he may just have to give me a report on what he needs. But they're here saying, Your Honor, bifurcate right now. Right? But we don't have the evidence that we need. We're going to talk about the bank records in a few minutes. But this is all very significant stuff because my client paid $500,000 over the course of two agreements, by the way, to have this project go

forward.

And so that is significant because all of those things are going to matter as we go forward to try this case.

THE COURT: And here's my next question. If the fraud in the inducement is tried at the same time the breach to the construction loan agreement is tried, what's left?

MR. ALDRICH: If -- I think it tries the whole thing. If we do fraud in the inducement -- because as I'm standing here telling the Court, it starts in 2012, 2013, and it goes really to current. And that is all the issues are going to be resolved, in that one trial. That will include the fraud in the inducement, it will include the contract claims, the counterclaims, all of it, which is why our initial position is the Court shouldn't bifurcate. We should just try the case.

THE COURT: I get that. But my question is this: If I throw in the fraud claim with the construction loan agreement, I know Mr. Greer feels that will be a very short part of the presentation of evidence. I'm quite -- and this is a one -- I just know this. It would be -- your position would be the exact opposite. It would be, Judge, we're going to -- it's going to take days to try the fraud in the

inducement.

MR. ALDRICH: Of course.

THE COURT: Of course, right. I just know.

MR. ALDRICH: Of course.

THE COURT: And so -- and I was just looking at it from this perspective: If you have a fraud, you have a breach of contract, what's really left? I mean, you might have some affirmative defenses. You might have estoppel, waiver. I mean, I don't know. I'm just trying to think off the top of my head. But ultimately rescission.

But what's left? Because those would all -- I think, probably whatever affirmative defenses and the like would be available would stem directly from the facts as it relates to the allegations of fraud and the allegations of breach of the construction loan agreement.

Am I missing something?

MR. ALDRICH: No. In fact, if there were anything left, especially reputable things that were left or whatever, your Honor, whether it was a jury or bench trial would have sat through it, and would probably be in a position to either just make a decision on those issues or at least request briefing based on what was already done and then make a decision

on those issues. So that would seem to me to be more efficient just to do it all together.

THE COURT: All right. The only reason why I bring this up, I remember it was -- at one time I had a case, and it was specifically dealing with equitable indemnity issues; right? And so at first blush when you're dealing with equitable indemnity, there's no contract, no contractual indemnity. And I had a question for the lawyers. I said, Okay. In an equitable indemnity scenario, who do you try the case in front of? Right? And we had a real long discussion on that.

MR. ALDRICH: Um-hum.

THE COURT: And it actually ended up with some briefing. I think I know the ultimate answer to that question, but it's -- it's a fascinating issue. So that's why I brought it up. And we're clear, no one is disagreeing about equitable claims are tried to the Court, but I'm just looking at it from this perspective. Because if I bifurcate and we have to have the fraud heard at the same time or breach of the construction loan agreement, what is left to try? That's my point.

MR. GREER: I have the answer.

THE COURT: All right.

MR. GREER: So, your Honor, this shows exactly why the Court really must bifurcate. Because if you bifurcate, then the question in the case first will be was there fraud in the inducement. And your Honor will then look at that evidence and determine whether the evidence applies to the construction loan agreement or not.

And this is the important part. Because if the Court decides that neither that inducement goes to the contract, your Honor hears that, your Honor hears that theory, your Honor makes that decision, your Honor makes the decision first as to whether it was evidence of fraud in the inducement. Anything your Honor says wasn't related to the construction loan agreement then goes to the jury.

If your Honor doesn't bifurcate and hear this first, the jury winds up getting -- making decisions that the judge -- that your Honor later has to make because it relates to the construction loan agreement, we could have disparate rulings. And it's clear that if the judge is going to rule on something, the judge has to rule on it first. And so by bifurcating --

THE COURT: But what would be left?

MR. GREER: What would be left. Here's --

THE COURT: Here's my question.

MR. GREER: Just --

THE COURT: And -- and -- and these are just thoughts. This is not a decision I've made. These are just issues that I've thought about.

For example, would the fraud in the inducement issue be heard by me as a trial judge based upon the waiver language contained in the construction loan agreement?

MR. GREER: Yes.

THE COURT: These are just thoughts.

MR. GREER: Yes, that is --

THE COURT: And I don't want to cut you off, but put a big question mark after I say that. Right? I'm not saying --

MR. GREER: I think the language is pretty clear. It says anything relating to a dispute over this agreement, which would inherently include fraud in the inducement, your Honor decides.

THE COURT: Okay.

MR. GREER: It's big capital letters all the way through. And so --

THE COURT: My point is I'm just making a statement. That's all I'm saying. Put a question mark.

MR. GREER: Okay.

THE COURT: I don't know the answer to that. That's a question that's so obvious to me.

MR. GREER: Then you said what's left. Well, there's still -- with regard to the -- you have to go then over to the Impact Capital advisor group, and there is allegations of how they spent their money. How the money was spent is a big contention that Front Sight is trying to tie into this whole thing, but there is actually two different types of money here. There's money given to Capital Advisors that Front Sight is saying wasn't spent efficiently in marketing, and they feel they had more say and control over that money than -- than they got.

And then after May 2016, you have the -- the performance bonuses, which Front Sight had no control over, no ability, no right to even know where it went. So when Mr. Aldrich said we spent over $500,000 here, well, that's right. It's maybe $360,000 to EB5 Impact Advisors, 140 over here to Front Sight. I don't know -- to LVD Fund. I don't know how it balances out, but there is two different types of payments, two different amounts. And those are two different trials.

So if the judge -- your Honor bifurcates the case, looks at the fraud in the inducement argument, determines, you know what, this fraud in the inducement

evidence does not apply to the construction loan agreement, therefore, jury, it's going to go to you and you can deal with it on the capital advisor case. Conversely, if your Honor says that it does apply, then your Honor makes a decision on that fraud in the inducement evidence at that time so that the jury doesn't make a decision, a duplicative decision later when we go back to them over to the other case involving Capital advisors and which there are still issues that will remain as to how the money was spent, did Front Sight have the right to control that money, was -- you know, did -- Impact Capital advisors somehow breach any duty they had to Front Sight, which is all jury. All jury.

So really the only logical way to make it work and avoid duplicative decisions and to efficiently get the process done is to bifurcate. And I think it will have to be bifurcated eventually. I'm confident enough, almost 100 percent. The question is do we do it now versus later. We're pushing for us to do it now because doing it now has the added benefit of allowing the construction lender funded by EB5 investors to move quickly through this process to get final determination before the Court.

Because it's -- your Honor -- I think your

Honor is going to have to bifurcate it at some time.

So anyway, that's what I have to say.

THE COURT: And here's just one other thought. I was listening, and I think it only goes one way. If someone disagrees, that's okay, and you can tell me why.

But if I make a determination -- for example, I haven't looked at the language, and this isn't that specific motion as it relates to the waiver of the jury trial and its impact pursuant to the language contained in the construction loan agreement. But if I make a determination that there's a nexus between the construction loan agreement and the allegations of fraud in the inducement, it would appear to me as a matter of law that has to be decided by the terms and conditions as set forth in the construction loan agreement, versus if I make a determination that they're unrelated, then maybe they're tried separately. I don't know.

MR. GREER: That's exactly what would happen.

THE COURT: But those are just my thoughts from a legal analysis.

MR. GREER: I think that's the logical way that it works out.

THE COURT: Okay. Just -- Mr. Aldrich. You

can -- we're just having a dialogue here. Then I'll make some decisions.

MR. ALDRICH: Okay. So, I mean, I've kind of said my piece. I will clarify. Mr. Greer was explaining that EB5 Impact Capital Advisors is actually the regional center, and I don't believe that it was the one that was paying money out, due to the marketing. I believe that was EB5 Impact Advisors.

And so that may help with, you know, some of the confusion, kind of -- sorry, kind of goes to my argument that it's all kind of one in the same. But, I mean, I've kind of -- I'm kicking a horse that's down already at this point. I mean, our position is that the fraud covers the whole time and it should not be bifurcated. But if the Court is going to bifurcate it --

THE COURT: No, no.

MR. ALDRICH: -- we got to do the --

THE COURT: I'm not sure.

MR. ALDRICH: -- I don't have anything else to add.

THE COURT: Okay. But I think -- would you agree with this or disagree that if -- and my question is this: That if the fraud is somehow linked to the construction loan agreement, then the language in the

construction loan agreement would dictate how we proceed procedurally as it relates to a jury trial or non-jury trial?

MR. ALDRICH: That's a good question.

THE COURT: That's what my --

MR. ALDRICH: Probably needs some briefing; right? Because my position is that we were defrauded into entering in that agreement in the first place.

THE COURT: Right.

MR. ALDRICH: So to me fraud claims -- there are common law fraud claims. They're legal questions and should be in front of a jury. I mean, I recognize that there's a construction loan agreement that has this waiver of a jury trial in it, and now I've already expressed my position that that's waived anyway. And so, you know, I guess, I would disagree to some degree, because I think that they are common law claims that should be heard in front of a jury. And fraud.

MR. GREER: If I can, I think the law says there is a lot of law on this in the arbitration clause that I think applies equally to the jury waiver clause.

THE COURT: There is no doubt --

MR. GREER: Because you have to show fraud in the inducement of the particular clause in order to -- to get around a clause that's in the agreement.

Fraud in the inducement of the agreement itself does not get you around an arbitration clause. It won't get you around a waiver of jury trial clause.

THE COURT: But, I mean, like the seminal case involving the arbitration, enforceability of arbitration clauses would be -- I think it's the AT&T v Concepcion case that was decided by our United States Supreme Courts, probably about six, seven, eight, nine years ago. And that specifically dealt with the enforceability of the arbitration clauses.

What was unique about that, I mean, waiver of the right to a jury trial under the arbitration in a consumer contract setting, what's unique about that, that was actually a class action case. That is my recollection. I haven't read it in a long time.

But -- and -- and I think the United States Supreme Courts said the typical defenses of procedural and substantive unconscionability didn't apply, because I think that's a California case. And typically that was a defense, and they actually overruled the California Supreme Court in that case.

And -- but interesting. Because here's my thoughts. And this is one of those -- I mean, normally I don't -- it's rare that we bifurcate cases. We have Nevada case law that stands for the proposition that if

the damages and liability are intertwined, it would be abuse of discretion for the trial court to grant bifurcation under those conditions, you know.

And, however, regardless of the -- whether you get a jury trial on one issue or not, or whether there's been a waiver or not, I do think that at the end of the day, the fraud can't be bifurcated from the breach of the construction loan agreement.

Now, I've had other thoughts, and I'll just throw this out. And this is one of the reasons why, when it comes to cases that might be somewhat more complex procedurally, and we've done this many times in this department. That's why we have trial protocols. And I think everybody understands what that means.

And so this is what I'm going to do for now: I'm going to deny the motion to bifurcate without prejudice.

And this is why: I feel that before I make a final decision, we have to vet, unless we have some sort of an agreement, as to specifically whether that fraud claim comes up under the terms and conditions as set forth in the consumer loan agreement. Although, if you want to do briefing on that, then we can.

And just as important, if I rule that they do, then I probably would bifurcate those out and have

those tried together, if you understand what I'm saying.

MR. GREER: I don't think we can bifurcate just the fraud claims, though.

THE COURT: No, no, no. I'm saying I will try the construction loan agreement along with the -- with the fraud claims in the inducement together.

MR. GREER: And then to the extent they apply, they're determined. To the extent they don't apply and they relate to the other acts, then they're tried with the jury in the other action.

THE COURT: Potentially, yes.

MR. GREER: Okay.

THE COURT: You see what I'm saying, Mr. Aldrich?

I think -- I'm not going to sit here and say, Look, sir -- and that's why I denied the motion -- that I'm not going to make a determination that the fraud claims as a matter of law without having briefing on the language as contained in the construction loan agreement stands for a waiver of your client's right to a jury trial as it relates to the fraud claims, without having full briefing on that issue.

I do think they're related. Right?

Just as important, too, looking at this, and

this is where I think we need to dig a little deeper, would fraud be -- if there's a determination of fraud, what impact does that have on the construction loan agreement? Right?

It's your position that it would be -- that it would -- that the construction loan agreement would be void and/or voidable, I think; right?

MR. ALDRICH: Yes.

THE COURT: I understand that.

And I know Mr. Greer doesn't agree with that; right?

But those are issues -- those are somewhat complex issues that we don't see every day; right? I mean, everyone here might see them, but I don't.

But -- and so -- pardon?

MR. GREER: So if -- if --

THE COURT: Go ahead.

MR. GREER: So, your Honor, if I go up to a friend and, you know, and he wants to borrow some money, and I -- I pull out my pocket, I have 20 bucks. I can only lend you 20. Well, I need 40. I can only lend you 20. Right?

Then I go back around the corner and reach in my other pocket, I got another 20. My friend sees it and he says, You lied to me. You had 40. You said you

only had 20. I'm not going to pay you your 20 back, because you only gave me 20 when you had 40.

I'm not seeing how that has any impact on his ability, his obligation to pay the money back.

THE COURT: Well, here's -- well, here's the thing. And I'm not necessarily saying that, and I don't think -- I don't think plaintiff is taking a position that they don't have to repay the funds, the $6 million.

Is that a position you're taking?

MR. ALDRICH: Your Honor, I think that that all kind of remains to be seen at the end, whether they -- I certainly see the scenario where they didn't pay back the $6.3 million. There is also an argument to be had about damages. And all this is kind of addressed in the other motion that's out there.

THE COURT: I understand.

MR. ALDRICH: But --

THE COURT: I do. But I think we're -- I think we can't simplify it in this regard. Say, if we change our scenario slightly, where your friend came to you and said, Look, you know, I can raise $100,000 for you. And I got all this money set aside. And we can go ahead and start some improvements, and those types of things. And, yeah, I'm sure you can get the

$100,000, and lo and behold, it comes to light that maybe you can't get that 100,000. And whether you knew or should have known, that is a different issue. And you can only get 20.

MR. GREER: Yes.

THE COURT: And what impact does that have on the friend?

MR. GREER: Is it different, though, if he says, you know what, I can only get 20. That's all we got. You want me to give the 20 back to the people I raised it from? Or let me give it to you to for the loan -- you make the call. Clearly, I couldn't come up with what I said earlier I was going to come up with.

So -- and then if you take the 20, I think you have to pay it back with interest and terms, and I don't think that you can benefit from knowing that you're -- that the guy couldn't raise the whole hundred, and then take his 20 and take advantage of it.

THE COURT: And -- and this is important to point out. And understand, I try to think and make statements that are qualified. And there's a reason for that.

Understand, I think when we had this discussion, I said it was based upon the current procedural posture of the case; right? And so I

haven't thrown out the fraud claims as a matter of law, have I?

MR. GREER: No, sir.

THE COURT: You see where I'm going?

MR. GREER: Okay.

THE COURT: I can't -- it goes back to my statement, remember, I made regarding I can't rush to judgment.

MR. GREER: Yes.

THE COURT: Right?

MR. ALDRICH: Correct.

THE COURT: Yeah. And that's why I said all that, you know. I understand everybody's respective position. I do get it.

But until certain claims are peeled off or whatever, or are still part of the case, I look at it this way: Everything is still there.

Right, Mr. Aldrich? It's still there.

MR. ALDRICH: Yes.

THE COURT: And so I think -- and I think that's when judges get in trouble from an appellate perspective, when they rush to judgment. Because you can, ultimately, maybe be right, but -- after it's all said and done, but if you don't go through the process, we're going to say you're wrong.

Right, Mr. Aldrich?

MR. ALDRICH: That's correct.

THE COURT: Yes.

MR. ALDRICH: Okay.

THE COURT: So where do we go from here?

And that's without prejudice. I just want to make sure you understand that.

MR. GREER: Sure.

THE COURT: Because I do think -- and I don't mind saying this. On some level we're going to have to revisit, and maybe this might even go to an issue more of trial protocol. But we're going to have to revisit how these cases ultimately are going to be tried.

All right. And I don't know the answer to that yet. And I rely on counsel to help me out on that.

MR. ALDRICH: Understood.

THE COURT: Okay. So.

MR. ALDRICH: The -- I think the -- you know, the supplemental Rule 16, or 16.1, whichever qualifies as conference related to the counterdefendants and then the discussion of the NRCP 65(a)(2) notice.

THE COURT: Okay. Let's go to the Rule 16 issue.

MR. ALDRICH: Okay. So in this respect, I

mean, I think the issue there is the deadlines that are in the current joint case conference report, I should have looked at it before I came.

I don't know if, Kathryn, if you know what they are.

MS. HOLBERT: Yes.

MR. ALDRICH: I want to say trial is like a year from now, and experts are due in, like, June.

THE COURT: Right.

MR. ALDRICH: I'm -- I mean, for purposes of the conference today, obviously the defendants want to start some discovery on the counterclaims because they want to have that conference, and then if the Court is inclined, we need to talk about when we're going to really try the case. If the Court wants it to be different than what's in there in -- in the judgment of conviction right now.

MS. HOLBERT: Right. And typically for the purposes of the supplemental case conference report is do you agree with the current dates or not.

THE COURT: Right.

And, Ms. Holbert, where should we go on that? What's your -- do we hold -- because this is kind of -- this is kind of interrelated to the notice I gave regarding -- what was that? Let me see here.

Yeah, the status check regarding 65(a)(2) notice; right?

MS. HOLBERT: Correct. Yes, I think we're -- we're doing those together.

MR. ALDRICH: They seem to go together.

THE COURT: They do.

MS. HOLBERT: Yeah.

THE COURT: That's my point.

MS. HOLBERT: Right. Really the main thing that we wanted is that the supplemental case conference, that provision of the rule is then satisfied. That's what we wanted today so that we can begin discovery on those. I think the broader question of can we move the trial up, do the dates stand as is goes more into the notice issue.

THE COURT: Right. So any objection to this meeting the requirements of 16.1 as it relates to the additional claims?

MR. ALDRICH: The counter-defendants.

THE COURT: Counter-defendants, yes.

MR. ALDRICH: No.

THE COURT: Okay. So that's been handled.

MS. HOLBERT: Thank you.

THE COURT: All right. And, I guess, we -- we will have to, I guess, lodge or just file the

supplemental report on that.

MR. ALDRICH: The supplemental --

THE COURT: 16.1.

MR. ALDRICH: -- joint case conference report.

THE COURT: Yes.

MR. ALDRICH: Correct.

THE COURT: Yeah. All right.

Next up would be Rule 65; right?

MR. ALDRICH: Correct. So --

MS. HOLBERT: Correct.

MR. ALDRICH: -- the Rule 65 notice plus, you know, if we're going to change any dates in the supplemental joint case conference report.

MS. HOLBERT: Right.

MR. ALDRICH: Those seem to go together. And now seems to be the time to do it.

THE COURT: Right. But I don't know what you want to do, I really don't, as far as dates are concerned. Do we have some recommended dates?

MR. ALDRICH: I mean, we have dates in the joint case conference report already.

THE COURT: All right.

MR. ALDRICH: Those are fine for me. I know the Court has expressed a desire to go faster.

THE COURT: And there's -- there's a reason

why. And number one -- let me look here.

This is a business court case.

MR. ALDRICH: It is.

THE COURT: Everybody understands that.

I don't mind saying this. I spent more time on this business court case than any business court case I have, including some pretty complex shareholder derivative actions involving strip resorts and -- and other matters involving actions of political subdivisions within the state of Nevada. I mean, I have. And -- and notwithstanding they're all very important. I don't mind saying that.

And so my point is this. I remember taking a look at the rule, and this is an often overlooked provision under Rule 65, I've done it in one other case, and it just seems to me that from an efficiency perspective, and that's more so than anything else, if you have a potential contract in place that impacts certain claims of whether there's a right to a jury trial or not, that I've heard a lot of testimony. We can all agree.

Just as important, too, some of the testimony it reminded me of -- it was -- some of it was deposition.

MS. HOLBERT: Yes.

THE COURT: Great. Right. It was.

So I just thought about it, and I said -- I looked at the provision. And I said to myself, I'm always told by our Supreme Court, and more specifically I think this whole business court was the child of Justice Hardesty, I think he started this. This is one of his pet projects. And there's nothing wrong with it. He wanted Nevada to become like the Delaware of the west --

MS. HOLBERT: Right.

THE COURT: -- and have the specific business court and the like. And so when I looked at Rule 65(a)(2), and reflected a little bit, and it provides as follows:

"Before or after the commencement of a hearing of an application for preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application."

And I think I understand why. Goes to the issue of efficiency; right?

MR. ALDRICH: Sure.

THE COURT: So where do we go from here? Because those are my thoughts. And for the record, I

haven't made any decision. That was a lot.

MS. HOLBERT: I don't think we're opposed with, you know, with consolidating the evidentiary hearing with that.

Another issue that is on calendar today is a status check regarding that evidentiary hearing.

Because, of course, we need to finish that. So it's hard to talk about when we're going to set a trial when we don't even know when the evidentiary hearing is going to be done.

THE COURT: I agree, ma'am. I do.

MS. HOLBERT: Right. So I don't know really what we take first, but if we're still doing the evidentiary hearing in January, and haven't done some of the other stuff, I don't know how we can do trial in February.

THE COURT: I understand, ma'am. I do. I get it.

MR. ALDRICH: Yeah. So my concern comes with a couple of things. Number one, right now, experts are set. Initial expert disclosure is March 5 of 2020, which is just a little under five months away.

You know, we can move that up a little bit, but I remind the Court we've still got discovery battles to fight. If I lose those discovery battles in

a couple of weeks, then that may change a little bit. But if I win and the Court gives them a reasonable amount of time to provide the information I'm asking for, that's going to push us, I'm assuming, you know, close to the end of the month of November, or something to that effect. I've got to have time to get that stuff together, get experts and all that kind of stuff. So that's where my concern comes.

You know, I'm fine with the current dates. I understand why defendants wouldn't be. At the same time, as the evidentiary hearing goes forward, I got to be able to have discovery.

THE COURT: I'm not going to side step the process.

MR. ALDRICH: I will -- correct. And I will tell the Court my reading of Rule 65(a)(2), and I did some research. I -- maybe 20 minutes, 30 minutes, just to see what I can see about it. And really all I found is it's the Court's discretion to do that.

And then it -- but it appears to me to be a combining of trial and the evidentiary hearing.

THE COURT: That's -- I agree with all that. I do.

MR. ALDRICH: Right.

So that's how I read it, which then leads to

this discussion where I'm saying I'm fine with the dates as they are. But if we're going to move it, it's got to be a practical amount of time to give us, you know, a way to get it all done. And then -- and I just have -- I just have a block of time. At the end of April and early May, I can't have a trial, so ...

THE COURT: I understand.

MR. GREER: I can -- just two cents here.

And I also did a little bit of research on this. It looks like the Court has discretion at the end of this, of the evidentiary hearing, if the Court looks like at that point in time it's got enough evidence to make the decision that we made at trial, it can be done.

And I think as we move forward here, I think it's highly likely that by the time we get through this preliminary injunction evidentiary process, your Honor is going to have everything before the Court that it's going to need to make that decision.

I don't see that -- I know we're talking about discovery. This is all, in my opinion, extraneous stuff because the real evidence is going on the stand, and your Honor is going to have it. And that rule is there so we don't have to put it on twice. And so it's -- I think it's -- it would be more powerful then,

you know, summary judgment motion. But I do think if the evidence plays out the way I believe it's going to be, I think your Honor is going to be in a position where you can do that, and not only make a ruling on the preliminary injunction, but concurrently make a ruling on the case. And that's I -- we would prefer that. The sooner the better.

So -- and, I guess, that, again, would be answered as we go forward, because I think Mr. Aldrich is going to do a good job here and put on all the evidence that support his, you know, fraud in the inducement claim and all of his other causes of action in order to get that preliminary injunction ruled on in his favor, and in doing so I think he's going to show all his cards. And at that point in time I think the Court is going to be able to rule on behalf of the defense, particularly LVD Fund on the issues involving the loan. And we would encourage that.

THE COURT: Interesting.

MR. GREER: The Court has given notice to everybody, so everybody has adequate notice if the Court does that, makes that kind of decision.

THE COURT: What about -- and there's another reason why I didn't think it would be -- represent a significant problem in this specific case. Because

it's my understanding, Mr. Aldrich, you've already retained some experts; right?

MR. ALDRICH: I have.

THE COURT: Yeah, one specifically related to, I guess, the interpretation of the contract and/or construction loan agreement and whether there's been compliance or not. That's my understanding. Is that --

MR. ALDRICH: Well, I have -- I have --

THE COURT: Whether --

MR. ALDRICH: I've submitted a declaration from an EB5 expert.

THE COURT: Right.

MR. ALDRICH: And I've submitted reports, the jobs report. I'm -- I -- I've got a financial expert. I haven't produced a report from him yet because I don't have all the information that I need.

Am I missing anything?

So that's it so far.

THE COURT: So, I guess your most significant concern would be regarding the financial expert, without enough information?

MR. ALDRICH: Yeah. I mean, right now that's my biggest concern. And because experts aren't due for a long time, I haven't done a formal --

THE COURT: I understand.

MR. ALDRICH: -- you know, sit down with them, make sure they have every single thing they need and all that kind of stuff. I mean, we're still in the process of that, but it's -- I mean, it's happening.

MR. GREER: It's really just administratively tabulating things because Front Sight knows every penny that it gave to the defendants. It knows what its alleged damages are. It's in control of that information.

So even that is an easy issue to deal with. And you want to make -- for the record, your Honor, those -- the declarations are hearsay and should not be admitted thus far. I think if counsel got his expert on the stand and -- as he should, then it would be admissible.

THE COURT: Don't worry about that. I mean, I get that.

MR. GREER: Yeah. I mean that's dangerous.

THE COURT: Don't worry about that. Those are -- I guess, you know, number one, the reports don't get admitted into evidence. Many times lawyers don't take depositions of experts because they want to limit them to what's contained in their report. And I get it. But you got to have live testimony. I understand.

So I'm not worried about that.

And you shouldn't have that concern. I mean, ultimately, at some point if there are experts to testify during our journey, they will, of course, have to meet all the requirements under Hallmark. They do. And -- and if they give you standard of care, compliance, causation-type opinions or whatever it might be, I understand that. So we're not going -- once again, I'm not going to rush to judgment. I've never been reversed on rushing to judgment. I believe in due process. I don't mind saying that.

So is this something we should visit a little later? But I think there is -- even if we do that, we still have to decide because this -- this is flowing in now to the motions for protective order and/or motions to compel; right? Because at the end of the day we have to make a -- I have to make a determination on discovery. And, I guess, the quicker specific documents get in the hands of the plaintiff's expert, it will, of course, accelerate the ability to prepare for the ultimate determination; right?

Do you agree with that, Mr. Aldrich?

MR. ALDRICH: Yes.

THE COURT: Okay. So what do we --

MS. HOLBERT: I think, your Honor, if we can

just leave the dates as they are right now, you file a joinder on behalf of the counter-defendants to the current cases in a joint case conference report, and then we revisit the issue.

But then we also need to set a continued date to get a plan to finish the evidentiary hearing.

THE COURT: Right.

MS. HOLBERT: Will that work?

MR. ALDRICH: That's fine with me. We're here in two weeks, or we can set a different one after that. Two weeks may not be soon enough to make that --

MS. HOLBERT: To do what?

MR. ALDRICH: To discuss what we're doing on the rest of the individual --

MS. HOLBERT: We just need a date; right? From the Court. The Court's availability; right?

THE COURT: Right. Right.

MS. HOLBERT: Because you're not done; right?

MR. ALDRICH: I'm not done, that's correct.

THE COURT: They're not done.

How many days has it been now?

MR. ALDRICH: We've had four days of testimony. One of them was real short, but four days.

MS. HOLBERT: And that's not on the 23rd; right? That's just a law and motion calendar on the

23rd.

MR. ALDRICH: Correct.

THE COURT: Right.

How much more time do we anticipate, Mr. Aldrich, as far as how many more days do you need?

MR. ALDRICH: Well, Judge, I got some experts I got to call. And I don't have the discovery. I mean, I realize it's a preliminary injunction hearing, but the case has been pending over a year now. And I -- I mean, we'll get to this in a couple weeks when we come, but I've been waiting for supplemental disclosures or a supplemental response or something for months, with promises that they were coming, and then they haven't come.

And so, you know, I mean, certainly another day, maybe longer. But again, I mean, this --

THE COURT: Should we decide this on the 23rd?

MR. ALDRICH: Probably.

THE COURT: And I think for the 23rd, should we set a status check for setting additional days for the evidentiary hearing and testimony?

MR. GREER: What was that?

THE COURT: You're going to be here on the 23rd, at least for now. Assuming you're not in trial. If you're in trial, Mr. Greer, I get it. We'll just

move it to a time convenient for everyone. And I hate kicking the can down the road, but there still are a lot of balls in the air, I think, right now.

MR. ALDRICH: Yes, please.

THE COURT: And then they're going to have to fall ultimately.

But on the 23rd, we should plan on setting more days for testimony; right? Within the next -- within that next month or so.

MR. ALDRICH: That's fine.

THE COURT: And maybe get everything potentially done, except for experts. And maybe if we can -- I'm not sure. But we'll talk about that on the 23rd, but we should definitely set a plan for -- for who's anticipated the next witnesses will be and have a time set for those witnesses.

MR. ALDRICH: Okay.

THE COURT: So, Ms. Holbert, do you agree?

MS. HOLBERT: Yes. Thank you, your Honor.

THE COURT: Okay. All right.

You got that? Status check regarding dates for the evidentiary hearing schedule.

To my understanding, we might want it -- it might be premature, but I'd love to get that set.

So what do we have left now? Pending motions;

right?

MR. ALDRICH: We have two. Well, it's two issues, but it's the -- they filed eight motions to quash. I filed an omnibus opposition, so there's that set. And then there's a set. I filed a motion to quash related to some subpoenas that they sent out. So we can start with theirs because they came first.

THE COURT: Okay.

THE COURT REPORTER: Should we take a break now, Judge.

THE COURT: If you need a break, we can take a break.

What we'll do, we'll come back about 3:05 or so. No later than 3:10.

We'll take a break, ma'am.

-o0o-
(Recess)
-o0o-

THE COURT: Okay. I guess next we go to the motions to quash; right?

MR. ALDRICH: That's correct.

MR. GREER: Yes, your Honor.

THE COURT: Motion to quash.

MR. GREER: Your Honor, to help us get through these in an efficient fashion, I've broken them down into three categories.

You have subpoenas that Front Sight has issued to Empyrean West, J. Carter and David Keller.

THE COURT: I'm ready when you are, sir.

MR. GREER: Okay.

Your Honor, this is -- Empyrean West is a company that Mr. Dziubla was associated with prior to his involvement with Front Sight. It involves the use of EB5 capital regarding the San Diego Hyatt project. There's been testimony from Mr. Dziubla on the stand and the various declarations that this was his prior EB5 experience directly with the raising and developing of that property.

So arguably there would be some relevance to information confirming that he was associated with this and that he had this EB5 experience. However, the problem we have with the subpoenas is they are just way too broad.

If we go to -- the Exhibit A's are the same on each of the three subpoenas: The Keller, Carter and Empyrean. So they just ask for the exact same information just from different parties.

The Question Number 1 is: Provide all documents you possess or control showing communications between any employee, officer, member, manager, agent, or principal of Empyrean West and Robert Dziubla, John

Fleming, Kenworth Capital, Legacy Realty Company, Las Vegas Development Fund pertaining to the San Diego Hyatt project" for which Empyrean West raised EB5 (indiscernible) investors through Liberty West Regional Center.

Way overbroad. The burden it would put on Empyrean would be overwhelming and not relevant for the most part. If it was specifically tailored to identify what Mr. Dziubla's position was or relationship was, what functions he was responsible for, what he was involved with, they would arguably have some relevance. It's just this takes in everything under the sun and needs to be quashed. For that reason, it's just -- it's just uncontrollably broad.

The second one suffers from the same problem. The second one is even more broad, in fact, because it asks for:

> "All communications, all documents you possess controlling, showing communications of any type between any employee, officer, member, manager, agent, or principal of Empyrean West and Robert Dziubla, John Fleming, Kenworth Capital, Legacy Realty Capital, Linda Stanwood, EB5 Impact Advisors, EB5 Impact Capital Regional Center, Las Vegas Development Fund,

LLC, from March 2012 forward."

Again, incredibly overbroad, covering potentially privileged things affecting the privileges of third parties, potential attorney-client privilege material. It's just way, way too broad and unmanageable.

The third one is all documents showing communications between you and all those same players again. So that's for the same thing, again with no subject matter at all.

And then the last one:

"Provide any documents you possess or control regarding the Front Sight project and the EB5 fundraising that sought investors from the Front Sight project by and through EB5 Impact Capital."

Now, there may very well not be any documents in that category because they weren't involved in it at all, but as phrased it -- it has the same concern as we've seen in the past, where Front Sight is trying to get its hands on very important, guarded -- jealously guarded proprietary information about the names and contact information of LVD Fund's investors, its brokers, its agents. When we said in this court before, the problems that LVD Fund had with Mr. Piazza

and Front Sight getting that information on some of the brokers and going directly to them, trying to end run around them in order to go directly to the investor, the brokers rather than deal with LVD Fund.

This is what gives LVD Fund value is its contacts with these agents, its knowledge of who they are, what their contacts there are, what money they have available, et cetera. And giving that up would be very, very detrimental to LVD Fund in general, but in particular to Ignatius Piazza because -- and I haven't conferred with Mr. Aldrich and discussed the possibility of a protective order because oftentimes that helps out.

But it doesn't work here because Ignatius Piazza is involved, and I think it's clear from his actions that he doesn't care what the Court says. He's not going to care about a protective order. He's going to take these things, and he's going to use them to his advantage. He's already sent damaging correspondence directly to the handful of brokers that he has the contact information for.

So, again, as to this particular group of individuals that are being subpoenaed, that may not be anything that falls under that for Request No. 4, but to the extent they are, we object because they would

not have a right to that information.

So that is the first group. It might be easier just to do these as a group at the time. I suggest, your Honor, that Mr. Aldrich -- unless your Honor has some questions for me, that Mr. Aldrich maybe address these three, and we get them handled.

THE COURT: Okay.

MR. ALDRICH: Thank you, your Honor.

I guess I have to start with Mr. Greer and I did talk about protective orders and an order from the Court that we not share this information except outside -- or I'm sorry, except within the litigation. He made that same statement to me about Dr. Piazza. I just have to address that initially.

There's -- Dr. Piazza has complied with all court orders in this case. He hasn't been ordered not to do anything. He hasn't done anything he was ordered not to do. So -- and interesting that defendants come in and say that because we've got a court order for an accounting. We didn't get a full accounting. And then they filed his tax returns in the open forums, some different things like that.

So if that's the basis for the objection, then we should get the information. The Court can order that we can't use it except in the litigation, and off

we go.

But let me address these points here. The first point that I mentioned was the -- that the motion's late. And so procedurally the Court, you know, can deny and allow the discovery right off the bat.

But with J. Carter, Dave Keller, and Empyrean West, the Court may recall that Mr. Dziubla represented a couple of things significant. One was that they weren't together on the San Diego Hyatt project, which ultimately Mr. Dziubla certainly admitted, never went anywhere, but he represented them as partners early on for starters. He also represented them as the only ones allowed to do EB5 fundraising in Viet Nam. Those are all significant related to the fraud claims.

The other thing is that there -- these are actually narrowly tailored. We're asking for communications that they possess or control -- I'm looking at No. 1. -- between any employee, Mr. Greer went through it, of Empyrean West and Robert Dziubla, a party to this litigation.

John Fleming, a party to this litigation, and the other person who was supposedly out raising money with my client's money.

Kenworth Capital, Inc. Well, that is

Mr. Dziubla's company. He testified as much that one of the first engagement letters is on Kenworth Capital letterhead.

Legacy Realty Capital. My understanding is that that this Mr. Fleming's company.

So again, I haven't even gotten outside of any parties yet.

No. 5, Las Vegas Development Fund. Also a party.

Rule pertaining to the San Diego Hyatt project. That's -- that's it. That is narrowly tailored.

There hasn't been an argument that that's so many documents it's overly burdensome. And we're at an interesting position because I put in my pleadings that they don't have standing to object to these. Interestingly enough, when we argue the next motion, we have to deal with that issue for myself.

But nonetheless, since that's the main objection is that it's overly burdensome, then that's why I addressed them individually.

But that No. 1 is a narrowly tailored request.

Now, No. 2 admittedly is a little bit broader because it doesn't limit it to the San Diego Hyatt project, but it is limited in time from March 2012 to

present day, which is the relevant time frame. I suspect -- again, we haven't had an argument that this is a huge amount of the documents. I suspect there probably aren't that many documents, certainly from the 2014 or 2015 time forward, but we're certainly entitled to discover these things. Remember, I know the Court knows this already, but whether these become admissible or not is one thing; discoverability is broader than admissibility anyway.

The next thing, the request was communications between at least these three: Dave Keller, J. Carter, or Empyrean West between you and Robert Dziubla, a party; John Fleming, a party; Kenworth Capital, Mr. Dziubla's company; Legacy Realty Capital, Mr. Fleming's company; Linda Stanwood, also a party; EB5 Impact Advisors, LLC, also a party; EB5 Impact Capital Regional Center, also a party; and Las Vegas Development Fund, from March 2012 to the present. Relevant time frame.

The last one:

"All documents you possess or control regarding the Front Sight project and the EB5 fundraising that sought investors for the Front Sight project by and through EB5 Impact Capital Regional Center, LLC."

Now, this one is important because there were representations, number one, that this was the only project that they were working on, even though apparently there was also a San Diego Hyatt project going on at the same time.

We continued to hear about the proprietary nature of the jealously guarded information about investors. And I guess a couple of points on that real quick. Number one, we're a year in the litigation. We continue to hear this is proprietary. It's privileged. We have no citation to authority why it's privileged. I've addressed in my brief this trade secret argument that they've made. It's not a trade secret. This is information that has to be provided to the USCIS.

MR. GREER: Lacks foundation.

I'm sorry, it does have to be provided. I withdraw that objection.

THE COURT: Okay.

MR. ALDRICH: It has to be provided to the USCIS. Now, I cannot stand here and tell the Court that I'm going to get it from the USCIS. I did a FOIA request a long time ago, and I don't have it back. And it's hard for me to get a status on it. So I don't know what the USCIS would give me, but that information certainly goes to the USCIS.

Again, if the Court wants to order me and my client that we're not able to utilize that information outside of this litigation, I can accept that. And we'll properly advise my client, and I know he will abide by the Court's order.

And the other thing that's -- it hasn't happened yet, and I think is going to have to happen, is we continue to hear about the immigrant investors that we have to protect. We haven't actually seen any evidence there are immigrant investors. We're all assuming that there are. But at some point that has to happen, too, because this is supposed to be under the EB5 program. There are supposed to be investors there.

And, by the way, as the motion that I just filed the other day talks about, there's a dispute on whether they -- whether Front Sight can pay off this loan or not. There is a prepayment provision in the contract that allows for it. But it can't, under certain circumstances, relate it to the investors.

So we have to somehow find a way to make this work that continues to be objected to and we're not getting information. We've got to be able to have that information. The Court needs that information because we've got money that we're trying to get ahold of to resolve all this stuff and we need to figure out where

all that goes.

So with regard to these three that we've talked about -- Dave Keller, J. Carter, and Empyrean West -- those are proper subpoenas. They're narrowly tailored. And we're entitled to that information.

One other thing I want to address. Mr. Greer didn't address it, and I'm not entirely sure if -- if there's an objection or not, but I did a note -- all of them are served with notice -- well, I'm sorry. Let me back up.

They weren't served. We also intend to subpoena them for deposition testimony, and we included some topics for a PMK. Those haven't been addressed by Mr. Greer, but it's -- they're very similar. And I think the same arguments apply. We think we are entitled to issue these subpoenas and take this discovery.

Does the Court have any questions for me?

THE COURT: No, sir.

MR. ALDRICH: All right. Thank you.

MR. GREER: I want to gather that Mr. Aldrich is saying these are narrowly tailored because they're limited to correspondence involving parties to the litigation.

That is not narrowly tailored. Just because

they are a party to this litigation doesn't mean that any correspondence they ever did in the past is all of a sudden discoverable from third parties. You know, we need to keep in context here this is third party discovery. One, they have to make a showing that they can't get it any other way. They haven't made any efforts to do that.

Two, this privacy issue, there's no argument here as to why they need the names of the investors, why they need the names of the brokers. And there's no evidence that the brokers are ever disclosed in any of the USCIS documentation. So this -- this isn't information that they would have a way to get through any source. It's very, very protected by LVD Fund, and actually anybody in the EB5 business who has relationships with brokers.

With regard to the EB5 investors having to come forward, they don't. The money here is lent by LVD Fund. The money gets paid back to LVD Fund. It then goes to the EB5 investors. This is all regulated through the USCIS. I don't think Mr. Aldrich is seriously saying that there aren't EB5 investors involved here.

Also there is another reason for privacy with the investors is there's a potential for repercussions

in their own country. Remember, they're trying to escape countries. And thus have an interest in keeping their interest, their identity from being publicly discussed in their home countries where it could cause -- they can have repercussions from that.

And what's missing from this whole picture is why do they need the names? Why do they need the names of brokers? Why do they need the names of investors? That really isn't even an issue here.

If these documents -- any documents that were produced would necessarily have to be redacted, and that would not take away any of the value. Because the only thing of relevance here is was Mr. Dziubla involved in this and what was his experience. So I think these are all way overbroad, your Honor. They bring in privileged proprietary information and potential attorney-client privileged information as phrased. And the motion to quash should be granted.

With regard to timing under Rule 26, these are timely and the Court has the discretion to consider them anyway.

So at this point in time I would ask that just the whole thing be quashed, counsel be directed to draft more narrowly tailored requests.

THE COURT: What would be more narrowly

tailored?

MR. GREER: Well, what -- they're not just -- you can't just narrow it to the party, to the subject here.

Documents identifying Mr. Dziubla's position with the company. Documents, you know, identifying projects he worked on.

Really this -- all that they need to confirm or deny is whether or not he was involved with that project. And without crawling into another company's business who is not a party to this lawsuit, they could do it with a very narrowly tailored request that says documents identifying Mr. Dziubla's association and involvement with the company excluding information relating to names of investors and brokers. That, I think, would come very, very close to that.

Right now it asks for, you know, if you sent birthday cards, it would be covered, or well wishes, or vacation discussions. I mean, they're just incredibly broad. They should be narrowed by issue not just by the party.

THE COURT: And I look at Exhibit A to defendant's motion to quash subpoena for deposition and documents to Empyrean, I'm looking at No. 1. He does list out -- he's looking for communications between

employee, officers, members, managers, agents, and principals of Empyrean West, LLC.

And he sets forth the names of specific individuals, and then limits it to the San Diego Hyatt EB5 project of which Empyrean West raised investment funds.

What's specifically wrong with that?

MR. GREER: Number one?

THE COURT: Yeah.

MR. GREER: So all documents, communications between anybody at Empyrean West and all these list of -- list of the entities pertaining to the project for which Empyrean West raised funds from EB5 during investors, literally, your Honor, that would mean that any type of internal communication, marketings that -- marketing solicitations and attorney-client privilege communications.

Irrelevant social communications. It doesn't ask by topic. It just -- it asks for any communication with anybody at that company with any of these people. What -- what kind of burden are you going to be placing on this -- this company. And what's -- there's no showing of any relevance to any of it, other than what was Mr. Dziubla's job there.

THE COURT: Well, I think what it is -- and

correct me if I'm wrong, Mr. Aldrich is looking for his pre-history and experience in EB5 funding; right?

MR. ALDRICH: Correct.

MR. GREER: And, again, your Honor, that's part of the issue really here is, your Honor, is to just repeat this, it's very, very important. It would be -- it would discuss brokers and investors, Mr. Dziubla's efforts to reach out to brokers, do business with brokers. It would identify his business model. It would disclose to Front Sight, very, very strictly guarded proprietary information.

Now, again, if it was excluding their names, if they just want to know was -- I don't even know how it's relevant. But if Mr. Dziubla has communications with investors in an EB5 project, before he came across Front Sight folks, how would it even be relevant here, other than the existence of Mr. Dziubla having experience. You don't need the names. You don't need the contact information from brokers for people that he was developing as his base for soliciting EB5 investment proceeds.

If I can imagine how they're going to do this, your Honor, this company, are they going to go between every employee, officer, member, manager, agent or principal, and then identify all communications with

each one of these separate individuals.

THE COURT: I would think, I would think they have a file.

MR. GREER: I'm on communications of Front Sight defendants?

THE COURT: Well --

MR. GREER: You know, it's not -- it's going to be -- and it's open ended. For how long? There's no time frame on it.

MR. ALDRICH: Your Honor.

THE COURT: Yes.

MR. ALDRICH: Number one, on here, it is -- this one -- Mr. Greer, actually addressed No. 2.

No. 1 is related to the EB5 San Diego Hyatt project.

THE COURT: Right.

MR. ALDRICH: I don't know how long that lasted. I mean, Mr. Dziubla admitted that it didn't go anywhere. So, you know, I don't know how much it is, but they haven't made an offer of proof that it's any significant amount either. Honestly, that is what Empyrean West would do when they were served with it. If they come back and say, It's 7,000 pages of documents, then we have a different issue.

But that isn't what we're here talking about.

We're here talking about is this sufficiently tailored, narrowly tailored to seek discoverable evidence? And the answer to that is yes.

MR. GREER: If I may. My question is why, why is it relevant?

THE COURT: I think it goes -- I mean, I don't -- based upon what I know about the case, I assume he's making -- this might go to the fraud in the inducement issue.

MR. ALDRICH: Absolutely.

MR. GREER: To the extent that he was involved with the project, yes. I mean, did he have experience? Did he work with them? What was the EB5? But they don't need the names of the brokers that he dealt with and the investors he dealt with, your Honor. That doesn't -- that doesn't add anything to the case. If there -- if there are communications between Mr. Dziubla and brokers, or between other Empyrean people and Mr. Dziubla and brokers, the identity of the broker doesn't matter. The fact that the communication was made would show that he was involved in the process. But there's no evidentiary value in identifying the name of the broker that was involved, and there is a very strong proprietary interest in keeping that secret, confidential.

So if this was tailored, one, as to time, it would be a significant limitation; two, to exclude the names of investors and brokers, which are proprietary, that would at least limit the damage that would be caused by this incredibly overbroad request.

If, with those limitations, the company then could put the objection on to the extent to which it was overly burdensome, but we're here today to protect Las Vegas Development Fund, Mr. Dziubla, Mr. Fleming, Kenworth Capital, and EB5, EB5 Impact Capital, the Regional Center of Front Sight getting access to proprietary information. It's not necessary for its case, but is damaging to the defendants.

MR. ALDRICH: Your Honor, here's an interesting thing. Listen, I hope that your Honor can see that inside I'm like jumping up and down, okay, because this -- think about these arguments. The argument is, We don't want Front Sight to know if we had any brokers in place in 2012 or 2013 or 2014. Why? Because I don't think there are any. Why does that matter? Because the representations are that they were raising tens of millions of dollars for an EB5 funding for the San Diego Hyatt project, that they have a vast network of agents and people. They're going to just bring them in, at the beginning, four or five months,

and promises by Thanksgiving day and all these different things. It makes no sense.

They would -- should have wanted to go, here yet, your Honor, make an order that we can't use it anywhere outside of this litigation, but we're going to show you this, Mr. Dziubla is telling the truth. But that's not what is happening. It's hide and obfuscate, and don't show our hand, and don't give anything, and it's continued objections to every single thing. And that is not going to fly.

And with respect to Mr. Dziubla, he's sitting here, and I say these things about him and it bothers me that he's here listening to me say it, but I'm not going to trust if your Honor let's him or has someone else redact documents. He threw away the EB5 documents. Threw them away. Hasn't provided a proper accounting. We're not taking their word for anything. This is absolutely 100 percent talking about, number one, it is easy, no brainer, relevant.

MR. GREER: Your Honor --

MR. ALDRICH: And discoverable.

MR. GREER: He's -- we'd love to let -- if there was a broker involved, the fact that there was a broker involved, is relevant. He should have a right to it. The identity of that broker is what is the

problem here. Because it is proprietary information.

Now, if they were properly redacted with initials where you can get the substance of the -- in fact, the way to go would probably be to allow it to be redacted, and then if -- if there's a need to have it disclosed, come before this Court and say, Okay. Your Honor, I -- I now have a reason that I need to know the identity of this broker, and here it is. But right now all they need to know is did Mr. Dziubla have interaction with brokers. They can get that with the broker's name redacted with only the initials and some non-identifying information so that Mr. Piazza, who, as the Court knows -- I've had a prior class action with him, I work with him well, and dealt with him in the past and know what he does.

I think this Court has also seen his -- his alerts that he sends out to all his members, talking about things that happens in this courtroom. He's not able to be controlled. And so we want to give it to plaintiffs --

THE COURT: I actually haven't looked at any of that. I don't look -- I just focus on what's in front of me.

And here's my point. I mean, it appears to me what Mr. Aldrich is attempting to do, and I think what

any lawyer would try to do when it comes to certain aspects of the case, he wants to know, I mean, really and truly, Okay. You worked on the San Diego Hyatt EB5 project. Show me what you wrote. Show me what you did.

MR. ALDRICH: Sure.

THE COURT: Isn't it really that simple?

MR. ALDRICH: Sure. It is.

MR. GREER: They should have a right to that.

MR. ALDRICH: And Mr. Keller and Mr. Carter, I believe attended a meeting early on as well that had to do with this. And then that's the information that I'm looked for.

And just to address this proprietary issue again, okay. Mr. Dziubla testified, he sat right there in that chair, and he said he's not marketed this project since the end of 2017. That is almost two years ago. So I don't know what we're protecting in proprietary fashion. This is the only project they're working on.

MR. GREER: That's not true.

MR. ALDRICH: That's exactly 100 percent true. I can pull it up.

THE COURT REPORTER: I need one at a time.

THE COURT: One at a time.

MR. ALDRICH: But this whole, It's all proprietary -- but, again, there's an easy fix to that. It's easy. The Court says, Mr. Aldrich, I'm going to let you try to get this information. And it's going to be restricted. You can only use it in this case. Your client can only use it in this case. You're not to go publish it out in the world.

That's very easy, and I'm willing to do that.

MR. GREER: See, but, your Honor, this case is, Let's call these people and talk to them about this litigation.

And then -- and undermine -- we already know that he's attempting to squeeze off the income from LVD Fund by not paying for all these months, and still not paying default interest.

He's a very aggressive and creative gentleman. And he will take that, and he will use it to his advantage, and they don't need it. They don't need the names. You only need the names you're going to contact those people, and they shouldn't be contacting them. So we need --

MR. ALDRICH: I'm not --

MR. GREER: So we should get them everything, but not the names of the brokers and the investors because that is proprietary and it will be misused.

MR. ALDRICH: I won't belabor the fact. The Court knows --

THE COURT: How can I -- how can I do that? What is the appropriate vehicle in place to even do that?

MR. GREER: Just with -- have they produced these documents, whatever you decide the scope is, with redacting the names of any brokers or investors that are involved. I mean, they have -- they have third-party privacy rights themselves also.

But here it's the most -- we're concerned about, in addition to that, is not letting Front Sight, Ignatius Piazza, get his hands on these because he will do something with them. And he doesn't need them. So we could just say, Produce it, redacting the names.

And then if Mr. Aldrich sees this and says, Hey, I need these names, we get a chance to meet and confer. We can get around that and just give them to you. If not come into court say, your Honor, Mr. Greer said we wouldn't need the names. I disagree. I need the names for this reason, and then the Court can make the ruling. Are we giving them carte blanche?

MR. ALDRICH: Am I going to get a chart that is blank?

MR. GREER: No. You would have -- with his

correspondence with just -- we could do it -- just give you the initials, and just do the initials of the first and last name, and -- so you can see --

THE COURT: How do we know that they will do that?

MR. GREER: Because it's proprietary to them too. They're going to be -- if we do this well here, maybe we'll avoid another, you know, motion to squash. But now it's going to go off to the producing party, and they're going to have to have a right to come in and do this.

MR. ALDRICH: One of the struggles here is that we don't know what there is. There could be nothing at all. Or there could be 7,000 pages. But that's why we get to ask, so that we can find out what is there.

MR. GREER: And if the names are redacted, doesn't matter whether it's zero or 7,000.

(Brief pause in proceedings.)

THE COURT: See, my concern, I was thinking about how to do this in such a manner where -- I don't know if, in the production of documents, we can rely on redactions from the source. I'm wondering if whatever is produced should be sealed. We bring them to open court and you can take a look at them without anyone

having access, except for the parties here. And if there is an issue and something should be redacted, we can redact the names at that time.

MR. GREER: Attorney's eyes only for that part of the process?

THE COURT: Any problem with that?

MR. ALDRICH: That would certainly give me an opportunity to look at it and make noise if I want to.

THE COURT: Right. And --

MR. ALDRICH: Yeah.

THE COURT: -- my point is this: You keep them sealed. When you get them back you come back here and -- or you could do it in your offices together, you know, or something like that. But I think potentially the documents could be, no question, relevant. I get the relevance issue.

MR. ALDRICH: Right.

THE COURT: But I was looking at it from this perspective: How do you even instruct them what to do?

Ms. Holbert, ma'am?

MS. HOLBERT: No, I agree. The problem, though, is depositions then. When are you going to take the deposition?

MR. ALDRICH: Yeah, we'll have to set the deposition for a later time, I guess.

THE COURT: Well, you want to read the documents.

MR. ALDRICH: Yeah.

THE COURT: And then maybe -- I mean, we don't know. What if there's no documents?

MS. HOLBERT: Right.

THE COURT: You going to take the deposition?

MR. ALDRICH: Well, I might.

THE COURT: Yeah.

MR. ALDRICH: Because there are going to be some facts.

So if I'm understanding, the suggestion then is so if I send the subpoena out and something comes back to my office, we will put it in the envelope. I will not look at it.

THE COURT: Or whatever you get from them it stays sealed.

MR. GREER: Stays in the envelope.

MR. ALDRICH: Okay. Fair enough.

MR. GREER: The instruction as to the producing party is to put it in a sealed envelope.

MR. ALDRICH: Okay.

MR. GREER: And put it in another in the mail and it remains sealed.

MR. ALDRICH: That's fine. And we'll hold

that until we can get together or come here to look at it.

MR. GREER: We can meet at his office.

THE COURT: I think that's the best way to do it, Mr. Aldrich.

MR. ALDRICH: Okay.

MR. GREER: So with that, though, even -- I guess, they're going to object to it. We can let them object over the breadth, I think, because they are still incredibly --

THE COURT: I mean, if you want to set a status check, we can bring them here, you can go out in the ante room and look at them. And if I have to issue an order immediately, I can do that.

MR. ALDRICH: We can coordinate that because there's a couple ways we can do it really. We can even call the law clerk or the JEA and ask about your availability.

THE COURT: Exactly.

MR. ALDRICH: And then just we can meet at my office or come here, either way, so that your Honor could do that with us. We can make that work.

MR. GREER: Okay.

THE COURT: Okay.

So that's regarding the Empyrean West; right?

MR. GREER: That also would apply to --
MR. ALDRICH: Keller and Carter.
MR. GREER: -- Keller and Carter.
THE COURT: Okay. So can you change the subpoena on that, sir? Can you adjust that --
MR. ALDRICH: Yes.
THE COURT: -- and make sure Ms. Holbert or Mr. Greer sees it before it goes out?
MR. GREER: I would ask that an instructional letter be included with that.
THE COURT: Yes.
MR. ALDRICH: Yes.
Does the Court wish for us to prepare an order or --
THE COURT: Yes.
MR. ALDRICH: -- is the transcript okay? You want an order?
THE COURT: Probably a simple order would be fine.
MR. ALDRICH: Okay.
THE COURT: It saves --
MR. ALDRICH: So --
THE COURT: Order signed off, filed. There's never any confusion after that; right?
MR. ALDRICH: Agreed. So what I'll do is I'll

prepare an order. So far we're only the first three, as to Keller, Carter, and Empyrean West. I'll run it by counsel. And then I will do a cover letter that it will include the order and the cover letter with the subpoena. Does that sound good?

THE COURT: And, I guess, the way to address the -- the motion would be granted in part, denied in part. Is that correct? Because we're not quashing the subpoena.

MR. ALDRICH: Correct.

THE COURT: We're modifying the subpoena.

MR. ALDRICH: Okay.

MS. HOLBERT: Yeah, the motion was to quash or for protective order. So the Court is entering a protective order.

MR. ALDRICH: Right.

THE COURT: Yeah.

MR. ALDRICH: So granted in part, denied in part, protective order as to what we've talked about.

THE COURT: Yes.

MR. ALDRICH: I'll get that in the order, and we'll follow that process. Is that okay?

MR. GREER: Yes. Yes. Okay.

THE COURT: All right.

MR. GREER: Affirmative.

THE COURT: So that one is done.

Let's move on to the next one.

MR. GREER: Yeah, three of them.

THE COURT: So next we're dealing with Bank -- Open Bank, Bank of Hope, Signature Bank. Is that it?

MR. ALDRICH: Just give us just one second, your Honor.

MR. GREER: We do banks. We can do banks.

MR. ALDRICH: We can do banks. Okay.

MR. GREER: Your Honor, there were four subpoenas to banks. I think we have a lot of similar issues, with Wells Fargo being the first one I'd like to deal with.

Your Honor, as we've -- we've filed motions in -- as to each of these subpoenas discussing the protections afforded to financial information. These are -- this is financial information of a party before a judgment has been entered against the party.

And those are -- those are clearly protected unless directly relevant to the proceedings.

Now, Wells Fargo is the bank that's impact -- EB5 Impact Advisors banked at. The Court ordered an accounting of that. All the bank statements have already been produced to Front Sight on that, along with additional documentation to promote or to support

the accounting.

So anything that would have to do with Wells Fargo at EB5 Impact Advisors has already been produced, and thus it would be -- there would be no reason to go to the bank for anything further regarding that particular entity.

None of the other entities would be relevant, your Honor. I mean, these are -- this is -- it's asking for financial information regarding individuals, regarding Linda Stanwood, John Fleming, Mr. Dziubla, the regional center, all of the -- all of the other entities other than EB5 Impact Advisors to which there is an allegation that the monies were misappropriated. All the monies that were given to Las Vegas Development Fund were by way of payments that were made after the completion of it obtaining investor funds and releasing those funds to Front Sight.

What came back are very similar to points. They -- Front Sight paid a premium to LVD Fund for them procuring the loan. Front Sight had no right to know where that money went, what was done with it. That's the business of LVD Fund as the lender. The interest that was paid by Front Sight, clearly it has no right to know where that money went, what it was used for.

So as to everybody else, other than Impact

Advisors, this would be completely inappropriate financial information, private information that is not appropriate to compel the production of prior to there being a judgment being entered and their finances and their banking information being relevant. That actually holds true for every other bank, including Wells Fargo, as to all of the named defendants other than Impact Advisors.

That's really -- your Honor, we cite the authority, just because somebody is a party doesn't mean you have the obligation to open up their bank account statements and their financial information. And law is very clear on that. So I don't really have much to add other than that. I mean, it's pretty clear law.

THE COURT: Thank you, sir.

MR. ALDRICH: All right. The bank, the request for documents to the banks are a little bit different, depending on what the account was being used for. So I notice, you know, Signature Bank. Number one on the request, the Signature Bank it asks:

"Please provide any and all bank statements and other documents for NES Financial's escrow account for Las Vegas Development Fund, LLC, account number," and it gives a number, "for

the time period beginning March 2012 to the present date."

So this is -- this will go some to -- I would expect that they would complain that this is going to have some proprietary information or something like that in it, which goes to the resolution we already talked about, but --

MR. GREER: I'm sorry.

MR. ALDRICH: -- the significant thing here is that over a period of time, Mr. Dziubla was making representations to my client about how many investors he has; money in the bank.

And that is particularly relevant to the fraud claims. It's also particularly relevant to the May 12, 2016, email and then the representations Mr. Dziubla made to Dr. Piazza thereafter, as Dr. Piazza testified last time, when he was here -- when we were here. And --

THE COURT: Now, Mr. Aldrich, I understand that. But isn't there -- aren't there other ways you can find out that information without subpoenaing the bank records?

MR. ALDRICH: No.

THE COURT: Why is that?

MR. ALDRICH: They're not providing them to

us. We've asked for them. That's the subject I mentioned in the motion to compel, whether the defendant entities or people would have to provide them. But, no, there's not another way to get this information.

And like I said, the defendants are not providing it. They're not providing anything like this. They've objected to every request related to this, just as they did to the subpoena.

THE COURT: Well, it would be -- it's a different animal. The reason why I am focusing on the financials, I understand what your position is.

MR. ALDRICH: Yeah.

THE COURT: I understand I ordered an accounting, and I -- I -- it's my impression you feel whatever was produced was very much deficient.

MR. ALDRICH: That is correct.

THE COURT: Okay. I get that. All right.

Well, in certain respects, you have factual allegations that they were underfunded or whatever and had no experience --

MR. ALDRICH: Correct.

THE COURT: -- and you make that allegation. Aren't they going to have to come forward with some evidence to show that they had that experience if they

don't come forward with it?

MR. ALDRICH: Well --

THE COURT: Maybe you win on that issue? I don't know.

MR. ALDRICH: Well, I will win on that issue because Mr. Dziubla already admitted he didn't have any experience. But the issue --

THE COURT: Or the finances.

MR. ALDRICH: -- the issue here --

THE COURT: The finances.

MR. ALDRICH: -- on the finances is -- there's several issues here. Okay?

Remember, we got defendants, Las Vegas Development Fund, whose CEO and founder is Mr. Dziubla. EB5 IC, which is the regional center, which Mr. Dziubla is an owner of that. We've got EB5 IA, which is the marketing entity, Mr. Dziubla is the person in charge of that. That's the entity that he destroyed the records for, and I'm not happy about the accounting.

We've got Fleming. Mr. Fleming, who is --

THE COURT: But think about what you're saying. You're saying he destroyed the records for and you're not happy with the accounting. Ultimately, doesn't that have some sort of impact on an evidentiary perspective?

MR. ALDRICH: Yes. And I filed that motion. But this is -- so this -- this -- right now talking about Signature Bank.

THE COURT: Right.

MR. ALDRICH: Okay. This relates specifically to the representations that Mr. Dziubla made as to how many investors he had at any given time.

THE COURT: Right.

MR. ALDRICH: And the Court hopefully will recall when Dr. Piazza testified last time, we talked about that meeting that occurred shortly after the May 12, 2016, email and he testified that Mr. Dziubla came in and said, We have to change the capital stack. We have to take out the minimum raise. But I've got these guys lined up and I have X number of people, and I don't remember the number right now, lined up ready to go as soon as we do this. And then he did.

As to Signature Bank, and this first request that I have, it's absolutely relevant to that.

The rest of the requests really relate mostly to the other entities and whether they also had accounts in those banks. We're trying to track down where the 500,000 and change from my client went.

I don't know that there's going to be any other information related to these other requests, but

every one of them relates to a party to this litigation -- right -- or NES is the escrow agent.

And I recognize that there are concerns about whether that might reveal the identity of the investors or something like that. I will abide by the protocol that the Court has already addressed. And we can do that with those documents as well. But this is relevant and discoverable stuff.

With regard to Open Bank, and the request there, we're asking for similar things. We have an exact account number. And -- but Open Bank is -- EB5 IA used that account. And then we want to know if there were transfers to any other parties in the case.

Now, Wells Fargo probably, admittedly, is my most difficult one because Mr. Dziubla is telling us that he's provided all those records, but there's not harm in me subpoenaing them from Wells Fargo. It doesn't hurt anybody. And then I get to verify that I've got everything. But I will admit that's the toughest one for me because I already have some documents from them.

But Bank of Hope is one that was used by Las Vegas Development Fund. And I've asked for specific to an account that we have information, and then same thing, I go through and ask for any accounts or

transferring or whatever that happened with, related to a party to this litigation.

Now, there -- there really hasn't been -- with one exception that I can recall as I'm standing here, there hasn't really been an objection that -- that I'm going to even get information related to the parties in the case. There was an objection raised or a concern by Mr. Dziubla that perhaps one of these subpoenas would result in us receiving information related to an account his son is also on.

Again, on the one hand I certainly see why he wouldn't want that to happen. On the other hand we want to know where the money came from or if there was any money from my clients. So if we need to do -- follow that same protocol, we're willing to do that.

But even the Wells Fargo documents that we received, there's a whole bunch, tens of thousands of dollars that to unknown vendors we can't even tell where it went, on the stuff we've already gotten.

And so I'm certainly hopeful that I might get a little more information asking from Wells Fargo, but they're all relevant and discoverable, and we'll abide by whatever protective order the Court imposes related to that information.

THE COURT: This is -- these are my thoughts.

And I think it's important to distinguish this case from a typical business court case in this regard.

Normally, what we would see, we would have a scenario where you have, maybe, a receivership or there's allegations of misuse of corporate assets or assets of LLC or partnership and the like. And you have business bank accounts for the corporation or the LLC, and you start subpoenaing documents of that business organization to find out where monies have gone and the like.

To me that appears to be a different animal here because you have a breach of contract, allegations of fraud in the inducement and so on. And so -- and it's different in this regard, because clearly, Mr. Aldrich, you have your burden of proof on certain issues. Just as important, you have to remember when it comes to certain forms of defenses, you just can't say you got a burden of proof there too.

And so I think it's slightly -- it's a slightly different animal because these are the separate accounts of the defendant in this case; right? And so it's kind of like a different analysis. And I'm just wondering from a traditional perspective because, for example, I think one of the cases that was cited by the defendants in this case was Schlatter v. Eighth

Judicial District Court.

And it's a '70s case, but it really focuses -- and it's a slightly different case, and I realize it dealt with -- it was a tort case. But the key language, based upon my recollection is this: They wanted to force the plaintiff to sign medical authorizations, income tax authorizations and the like. And the Nevada Supreme Court said, Wait a second here.

And it's kind of analogous to what we have going on here. You just can't go on a fishing expedition; right? That was the language that was used.

But my point is this: Can't you just straight up ask for stuff; right? And then ask for documents, and really specifically what you want, limited in time and location, and request them to produce it. If they don't produce it, that's a problem. Right?

MR. ALDRICH: Yes, I can. Yes, I did.

THE COURT: That's --

MR. ALDRICH: That's the motion to compel that's out there.

THE COURT: Okay.

MR. ALDRICH: But the Court will recall, the reason -- part of why this went out is because -- I mean, it's the same objection. The same objection to

my request for production to them as they're making here today. Okay. And the Court will recall that we had a hearing in July that they came in, asked for special master, and the Court, instead of appointing a special master, said, I'm going to impose a 14-day deadline on a request for production for documents.

THE COURT: Right.

MR. ALDRICH: So I had it ready to go. I dropped, I don't remember, between 550 and 600 over the six parties. I was serious.

THE COURT: I understand.

MR. ALDRICH: Okay. And -- and in those answers, I got a whole bunch of repetitive objections. I talked about the repetitive objections in my motion --

THE COURT: Right.

MR. ALDRICH: -- or opposition. But I got a whole bunch of those. Not one document got identified, not one got identified to even one response.

Okay. No justification of a privilege objection, proprietary objection. No citation, no case, nothing. Okay.

So what did I do? I subpoenaed it from a third party. Why? Because it's relevant for us. It's relevant to the fraud claims. It's relevant to the

fact that my client paid 520-ish thousand dollars to -- to try to move forward on this based on the representations that were provided.

So can I ask for it in a request for production? Absolutely. And I did.

And it's the same objection. They're going to say the same thing when we come here in two weeks as they're saying today.

MR. GREER: If we had a request for something specifically, we could do it. When you get 600 of all documents to support anything that you disagree with in paragraph 12 of the complaint, all documents that support anything you disagree with in paragraph 13, I mean, times 600 or whatever, we -- we get, like, 40 requests, and we thought about it. We focused on it. We asked for it. And that's how you get a response, your Honor, I think.

I think he's being unfair here by, saying I asked for a million things and I didn't get anything. That's because it's lost in the message.

The Court said 14 days, and that was to speed things up and make it easier. And I think that put a burden on counsel to use that judiciously and really focus, rather than say, Hey, here's 600 things, respond in 14 days. What are you going to do?

MR. ALDRICH: Ninety days ago. That was 90 days ago.

MR. GREER: But we did -- but in response we are producing everything we have. He's getting documents.

MR. ALDRICH: They did provide --

THE COURT REPORTER: I need one at a time.

THE COURT: One at a time.

MR. ALDRICH: They provided a supplement to initial disclosures, six-ish thousand pages.

MR. GREER: 6,000 pages.

MR. ALDRICH: Okay. I -- they sent a request asking for the attachments to the emails because they were not attached, and they're confusing, but that's --

MR. GREER: We fixed that --

THE COURT REPORTER: I need one at a time.

THE COURT: One at a time.

MR. ALDRICH: They did provide a supplement to 16.1 disclosures.

MR. GREER: And we took that last request and we paired up the attachments with the emails and have that for you.

MR. ALDRICH: It's coming?

MR. GREER: I think I was probably supposed to bring them today.

MR. ALDRICH: Okay.

MR. GREER: But it's -- because it's too big for email.

But, yes, it's done and we agreed to produce it in writing. Our response, we agreed.

MR. ALDRICH: That's true.

MR. GREER: We'll work with them, your Honor. We all need to get to the same point at trial here. I just think we all need -- it's better if we focus, really rather than throwing those broad nets everywhere which cause distractions.

THE COURT: Is that what's set for the 23rd, the motion to compel and for sanctions?

MR. ALDRICH: Yes.

THE COURT: And with the documents that have been produced, does that satisfy some of the issues you pointed out in your motion to compel, or do you know at this point?

MR. ALDRICH: No. The documents that were produced were mostly emails and some of the transactional documents. Very little that I didn't already have.

THE COURT: Okay.

MR. GREER: Which makes sense because both parties had the transactional documents and the emails

between each other. There should be very little that either side has the other doesn't.

THE COURT: Mr. Aldrich, do you remember -- and I don't expect you to have an infallible computer-like recollection of specifically what was requested, but do you remember in a general sense, for example, what was requested from any documents in possession of the defendant as it relates to the Signature Bank?

MR. GREER: I don't think we got that. We got it in the subpoena, not in the discovery. They're very general discovery demands. Nothing specific really.

MR. ALDRICH: I cannot make that representation because I don't remember. I will certainly look. I mean, with that 14-day order, I guess, I can send new requests.

THE COURT: Let me look here.

MR. ALDRICH: The large majority of the requests were contention interrogatories related to the paragraphs of the complaint.

MR. GREER: Excuse me, your Honor. I just had notes after Mr. Aldrich's presentation. He made the comment they wanted to know where the money went. I think that's exactly what case law says is inappropriate here.

With regard to EB5 Impact Advisors, we gave them everything showing where the money went, including the bank statements. Regarding what the lender does with the interest money, what the lender does with his progress payments, with his incentive bonuses, they have no right to that.

That's like, you know, the mortgagee subpoenaing the bank saying where did you spend my points I paid on the loan and where did you spend the interest I paid on the loan.

Certainly not the personal banking information, everybody who's named as a defendant in this case.

MR. ALDRICH: And we believe we do because it was money targeted for a specific purpose.

MR. GREER: So we're going to be able to get Piazza's banking statements and Mrs. Piazza's banking statements because LVD Fund gave Front Sight money we want to know where it went? That is Mr. Aldrich is going to stipulate to that being relevant and become the law of the case, is that the proposed stipulation?

MR. ALDRICH: No. But I can look at what you asked for from Jennifer Piazza.

THE COURT: Gentlemen, we're not going to go into -- and ladies, of course -- we're not going to go

there today.

You know what I'm going to do? And this is what I think you really need, and I'm not going to preclude any party from conducting meaningful discovery, but my concern is we can't go overbroad and just start subpoenaing bank accounts.

And that's why I think when I sat back and reflected, I made a distinction that these were common books and records, and you had to fight between shareholders of a corporation. Absolutely; right? And typically that's the type of -- that type of scenario, you have a business court where you might have partners fighting over things they want to know where the money went.

This is a different issue because we had -- we have different issues and entities that are litigating this case. There's allegations of fraud, fraud in the inducement. There's allegations of breach of contract, breach of covenant of good faith and fair dealing. I think that's a different scenario. I just don't think that gives you the right to start looking at all bank accounts. I just don't.

I do think that you have -- if something specifically tailored to a specific claim for relief, you can ask for that information, but it should be more

laser like and focused than just a broad, Hey, Signature Bank, I want all the stuff. Right? Because I don't think that's proper. I really don't. There's privacy issues there. There's issues as to whether it's relevant or not, and that's kind of how I see that.

Now, if we have any other comments you want to make on this specific issue, but I think I'm ready to rule. Anything else?

MR. ALDRICH: No, your Honor.

THE COURT: Okay. This is what I'm going to do. As far as the banking records are concerned, two things: First and foremost, regarding defendant's motion to quash subpoenas for deposition and/or documents to Open Bank, I guess we can include Bank of Hope, Signature Bank, and, I guess, there's probably one more at Wells Fargo, I'm granting that.

Mr. Aldrich, I want to make sure I'm perfectly clear on this. I'm not saying that potentially that information, you can't seek certain financials. I'm not saying that. I'm just quashing the subpoenas.

If you want to have a specific laser-like request for production of documents as it pertains to specific financials that you feel are important as it relates to your claims for relief, you can do it, sir.

And if they don't produce it, come in, we deal with it.

You see what I mean?

MR. ALDRICH: I understand, so it's granted today without prejudice. Something in the future if I can --

THE COURT: Yeah.

MR. ALDRICH: -- hone it in.

THE COURT: No impact on a request for production of documents, because I just -- I just feel that it would be -- it's just opening up Pandora's Box. I really and truly do.

Because, yes, you might have a right to -- if they're taking a position that, for example, monies are being spent for all these things and you feel, you know what, Judge, they mislead my client, they didn't do that -- I'm just being very general in nature -- you have a right to focus in on that.

I think potentially that might be relevant, and even if it wasn't relevant for the purposes of admissibility at trial, it might be relevant for the purposes of discovery. But I think it's better to approach it from that regard.

And that's one of the reasons, too, I don't want unnecessary delay. That's why I put a shortened time period on the responses to the request for

production of documents, not so this case won't get bogged down; right?

MR. GREER: Yes, your Honor.

THE COURT: So is there more?

MR. GREER: One more.

MS. HOLBERT: One more.

THE COURT: So we're actually getting something done.

MS. HOLBERT: Yes, we are.

THE COURT: Ms. Holbert, it doesn't always seem that way to me.

MS. HOLBERT: Right. We're making progress. We're doing good today.

THE COURT: Right.

MS. HOLBERT: The last one is for the defendant Sean Flynn.

(Brief pause in proceedings.)

MR. GREER: We're working it out here, your Honor.

THE COURT: I've been very patient. That's what I just told my clerk. I said, Maybe they're working it out.

MS. HOLBERT: Right.

(Brief pause in proceedings.)

MR. GREER: Okay. So, your Honor.

THE COURT: Yes, sir.

MR. GREER: To the last one with Sean Flynn, we've agreed to a compromise without prejudice to plaintiff's right to bring the motion in its entirety again or as to specific issues raised. But as to Sean Flynn, as to Items 3 and 4, we're going to fully comply.

That has to do with the documents regarding the economic study that he performed for EB5 impact at the regional center, No. 3; No. 4, documents relating to his receipt of the equity in the company in lieu of $20,000 payment for doing the economic study in their entirety.

As to 1 and 2, we're going to produce documents to Mr. Aldrich as requested with the names of -- sensitive names of any investors or brokers and identifying information redacted.

And if there any communications which are not being produced for any reason, I will be discussing them with Mr. Aldrich and we will give him the opportunity to seek further intervention from the Court.

MR. ALDRICH: Nevada law [indiscernible] --

THE COURT REPORTER: I didn't get what you said.

MR. GREER: Nevada law. Anything that's not been provided, we'll provide a log with the general subject matter and identifying information of the date of the parties, and then the reason for the -- not producing them.

THE COURT: So, in essence, that would be akin to a privilege log, is that it?

MR. ALDRICH: Yes, it would be a privilege log.

THE COURT: Which is appropriate. No question.

So has that been resolved for now?

MR. ALDRICH: Yes, it has.

MR. GREER: Now, we have your motion to quash our subpoenas to Morales Construction.

MR. ALDRICH: We're almost there, your Honor.

THE COURT: Is this plaintiff's motion to quash subpoenas of third parties?

MR. ALDRICH: Yes.

So defendants issued three subpoenas or notices of intent to issue three subpoenas to Morales Construction, Top Rank and All American.

The gist of our objection -- I mean, we've kind of laid it out in the motion. But we had a big discussion a few minutes ago about the breadth of my

requests. I had four to seven requests.

These requests are essentially identical. There's some typo as to some numbering, which is a little bit confusing, but there's around 31 or 32 requests to each of these entities.

And I think the main issue here is that they're not -- nothing here is relevant. I mean, we have had some discussion about Morales Construction and this senior debt and whether they're -- they got senior debt and, you know, the contracts require them to use best efforts to get senior debt.

But when we look at these requests -- I'll just kind of walk through. I'm going to walk through the -- it's my Exhibit A to the motion. I'm sorry, Exhibit 1 to the motion. And it's the one to Top Rank.

My understanding is that this construction line of credit with Morales, I don't have an understanding, and I don't think one has articulated as to why Top Rank and All American are here, are being subpoenaed. But the first request to All American -- I'm sorry, Top Rank is the one I'm looking at.

The first request to Top Rank is:

"All documents you used or relied on in entering into the construction line of credit."

I don't believe that's this entity, which

automatically makes them all nonrelevant.

And then the next one is:

"Any communications that relate or refer to the construction line of credit."

Again not relevant to any of the issues here.

And it goes on. I really -- I mean, I could walk through each one, and I will if the Court wants me to. But if the Court looks at these, they are facially overbroad and frankly not relevant at all. And they don't serve any need or purpose in the case. And that's the gist of our objection.

These are entities that Front Sight still works with. We think it's really just to harass them or make Front Sight look bad, or try to make Front Sight look bad.

Some of these are duplicates, too, by the way. Numbers 19 and 20 are duplicative of 7 and 8. Anyway, this goes through like that. But they're just overly broad and not relevant. That's the gist of our objection, your Honor.

THE COURT: Okay. Thank you.

MR. GREER: Your Honor, these three entities are each identified as parties to the construction line of credit, so that's where we sent requests out to each of the three.

The issues that we have with regard to line of credit is, one, is it real? Is it a sham?

Two, what money, what has been done on the property? LVD Fund, Mr. Dziubla have reporting requirements which are coming up from its EB5 investors. They need to know how much work was done on the project.

The breach of the contract of the construction loan agreements, Front Sight has not provided that information. So, I mean, granted we had -- we have roughly 30 requests on these. They are each very, very specific and designed to address specific issues that are relevant in this case.

Documents that you used to rely on in entering into the construction line of credit, this goes to whether or not this is a sham agreement or actually a bona fide line of credit. The construction loan agreement required Front Sight to get senior -- a senior lender. So we allege that that's not the case, that this is a sham. It's not a senior lender, and that is a breach of the contract. So we need to have evidence to show whether it's a sham or not.

So did Front Sight do an application? Did they give their financial information like they would to a lender? Did they provide any type of security to

the lender? That's the type of thing that the lenders would rely upon that we have asked here, clearly relevant.

Communications that relate to the -- between Front Sight and each of the three companies regarding the construction line of credit is directly relevant to both issues. Documents have been given to you from Front Sight relating to the construction line of credit. Obviously directly on point.

We then go into documents asking for monies that have been spent, clearly directly on point. Documents reflecting construction on the project, very relevant and very, very important for the EB5 reporting.

Remember, Front Sight has not given their bank statements on any of their prior productions. They have now missed their most recent required production of EB5 documentations. They didn't give anything. So now we're trying to figure, okay, where can we go to get that information. Clearly here, the Morales and this group are the companies that allegedly did the work on the project. They got paid for the work on the project. We just need to know what work was done and what they were paid for. And every single one of these questions goes directly to that.

We asked about construction schedules, construction plans, if they have any. That's something there under the construction loan agreement that LVD Fund has a right to. Any of the books and records of Front Sight that it has reviewed, that's something that the construction loan agreement, we have a right to. Any photographs or video recording of the project to see what has been done, that's something that we have a right to.

There's nothing privileged in here. Everything we've asked is directly related to Front Sight's application for this line of credit, the basis for them granting it. And lastly, in the end, their ability to actually service this large a line of credit, the last handful of questions, ask each of these individual companies what portion of that $36 million line of credit are you responsible for. And then to provide the documentation to show that you are capable of servicing or carrying that portion of that debt. That goes right to whether this is a sham or not.

I'll be very, very careful here to make sure that everything is relevant and carefully tailored. Your Honor, I think we did so. And it's just -- and we need these to proceed with the case.

From what we can gather, this is the only company -- these are the only companies that have done work on the property that have been able to figure out. So this is the universe of, you know, the work that's been, and we're going to have, and it's got to be reported to the immigration service before the end of the year.

Thank you. Good point.

Yeah, these were included in our request for production --

THE COURT: I did see that.

MR. GREER: Okay.

THE COURT: There was a request for production of documents specifically --

MS. HOLBERT: Right.

THE COURT: -- dealing with a lot of these issues.

MR. GREER: I did attempt an alternative method, yes.

All right. Thank you.

MR. ALDRICH: I haven't received any objection to my responses for request for production. Point that out.

But a couple of things. First of all, Mr. Greer said that Front Sight is required to get

senior debt. They're not required to get senior debt; they're required to use best efforts to obtain senior debt.

And, by the way, Dr. Piazza testified about this when he was here last time, and he talked about the fact that as he was entering into this agreement with Morales, that he was communicating with Mr. Dziubla about it the entire time.

There was -- Mr. Greer just mentioned that Front Sight has not given documents, and there is some most recent reporting or something that was due. I don't know what that is. I know that they brought your Honor another thing they filed this morning called notice of further monetary default. It says nothing about not providing information.

I know that we provided -- Front Sight has provided thousands and thousands of pages of documents. And so -- at any rate, this is all -- they're asking for information that they can get elsewhere. Although I will admit, it may be me that it would come from, you know.

MR. GREER: We asked.

MR. ALDRICH: But like I said, I hadn't got any objection to the response that we prepared. So, anyway, that's -- I think I've said my piece. I don't

have anything else to add.

THE COURT: So you're saying that it's premature, is that it? I'm trying to figure out what your position is, Mr. Aldrich. Because I'm looking at it -- I think this is on page 13 of the subpoena duces tecum. The Top Rank Builders, for example. And Request No. 1 would be:

"All documents that you used or relied upon in entering into a construction loan line of credit."

Is there anything specifically wrong with that?

MR. ALDRICH: (No audible response.)

THE COURT: Because I understand you said -- earlier you said, Look, Judge, we're just required to make our best efforts to get one.

MR. ALDRICH: Yeah.

THE COURT: But it's my understanding, you used your best efforts and there was -- your client obtained a line of credit.

MR. ALDRICH: Through Morales.

THE COURT: Right.

MR. ALDRICH: Yeah. And the consent of Mr. Dziubla.

But, your Honor, doesn't that, right,

automatically -- first of all, it's best efforts. Okay. And then they did it. But the fact that it's best efforts makes all of it not relevant in the first place.

MR. GREER: If it's best efforts to get a senior, obtain a senior loan, then they said they got a senior loan, but it becomes real relevant when it's fraud. And it's not a senior loan, it's a sham.

Best efforts don't include getting something and faking like it is a valid senior loan.

MR. ALDRICH: Huh.

MR. GREER: They said they got it. We need to know whether they really did or whether using their best efforts they put together a sham to avoid having to use their best efforts.

MR. ALDRICH: There wasn't a sham. Dr. Piazza has already testified about it. He took the stand last time and talked about it.

MR. GREER: I think he said it was a sham.

MR. ALDRICH: No, he didn't.

THE COURT: Well, ultimately, that might be a factual determination for someone else to make, so I won't call it one way or another, but I do think they have a right, just like we talked about before, if your client is taking the position that they did obtain a --

was it a $36 million line of credit, then okay. That's fine. But what documents support that; right? What happened? How was it obtained?

MR. GREER: And why did they use it if it's real? I mean, that's what caused all the suspicion.

MR. ALDRICH: Dr. Piazza already talked about that. He talked about it when he was here.

MR. GREER: That's --

THE COURT: But here's the thing. And I'm not saying you're wrong, Mr. Aldrich, but clients can talk about a lot of things, but you need -- is there evidence to support their position? And that's really all -- all they're doing is they're just testing his testimony.

And hypothetically, if, for example -- and I don't know how this works under the new circumstances. But if he added a line of credit, who issued it? How was it funded? How is there access? And I'm just talking in a very general nature.

For example, it you go to every Bank of America and get a HELOC loan, it gets you a line of credit on the house, there is documents you submit to the bank, and they look at it. They approve it. And they issue a line of credit to you, and -- and you can access that typically at your own discretion; right?

Based upon the line of credit that was issued.

Now, I don't know how much this differs from that scenario, but that's typically how lines of credit work. You're given a certain sum out there, whether it's $500 or whether it's $50 million, depending on your financials that you can access that. And I think that's all they're asking for.

That's from what I can tell; right? So what's wrong with that? That's my ultimate question.

MR. ALDRICH: I understand. Like I said, I've said my piece. I don't have anything to add to what I've already talked about.

THE COURT: Okay.

You get the last word, sir. No, you don't. It's Mr. Aldrich gets the last word.

Okay. And for the record, there was a request for production that wasn't responded to, so you're saying the subpoena the records directly from --

MS. HOLBERT: Still --

MR. ALDRICH: I know there hasn't been any discussion or anything about my responses. None.

MR. GREER: Your Honor, it's -- if we asked for it and they say, We're not going to give it, nothing says, Okay, I got to tie this up in court for three months on a motion to compel and what not. You

know what, we asked them nicely. They said they weren't going to give them, so we go right to the source. We don't know if we can trust them. To be disparaging here. Going to the source is the safer way to go anyway, and so we did try to get it directly. They said no. We decided to go to the source.

MR. ALDRICH: I actually don't remember what I said to that one. I don't know if it was because there was 14 days and I didn't have time to get it. But, again, no one has mentioned anything to me about anything wrong with my responses. But I remind the Court, I did. I wrote a 13-page single space letter to opposing counsel explaining the problems with their responses. And then repeatedly was told I was going to get supplemental responses, and I didn't get them, so I filed a motion to compel. But I get where we are. I understand --

THE COURT: Well, you filed a motion to quash --

THE COURT REPORTER: I need one at a time.

MR. ALDRICH: No, I filed a motion to compel. That's on the 23rd. Related to this -- I'm talking about related to the response.

MR. GREER: Your Honor, I probably missed the call when Mr. Aldrich called me and said, Hey, Keith,

you know what, you got that motion filed. I'll go and give them to you. Let's work it out here.

I didn't get that. I got an opposition back, so ...

MR. ALDRICH: That is true.

THE COURT: All right. I mean, I do think they have a right to that information at the end of the day. I don't want to side step the processes.

So is there anything else I need to know? I mean --

MR. ALDRICH: I have nothing to add, your Honor.

THE COURT: I mean, am I somehow prejudicing your client by making this determination without going through the process? I just want to make sure I'm not rushing to judgment here. That's all.

There is nothing else, Mr. Aldrich?

MR. GREER: No, your Honor.

MR. ALDRICH: No, your Honor. I stated our position.

THE COURT: Okay. Well, for the record we're talking about plaintiff's motion to quash subpoenas of third parties; right?

MR. GREER: That's it.

MR. ALDRICH: That's correct.

MS. HOLBERT: Yes.
THE COURT: This is what I'm going to do regarding the motion to quash, I'm going to deny it.
MR. ALDRICH: No limitation at all on those requests?
THE COURT: I'm asking -- I'm trying to get you to qualify --
MR. GREER: Limited to the dates.
THE COURT: You said no, you're limited.
MR. GREER: I limited each one to the dates, to the subject, to the type.
MR. ALDRICH: Okay.
THE COURT: That's why, Mr. Aldrich, I was wanting to make sure I understood your position, and you said -- I just -- is there something I'm missing? I need to dig in a little deeper.
MR. ALDRICH: I mean --
THE COURT: That's why I wanted to know --
MR. ALDRICH: I've said my piece. They are completely overbroad. Okay? They're repetitive and everything else, but I can -- I can go on and on. I know what the Court is going to do. I can see it. The Court has indicated, and I don't want to waste the Court's time.
THE COURT: Well, it's not necessarily -- I

don't -- whatever time is necessary to make sure the request is proper, I don't think I've rushed you out of here. I probably should have done so on many occasions, but I haven't, Mr. Aldrich.

MR. ALDRICH: I'm not saying you have, your Honor. Absolutely not.

THE COURT: But if there's a concern with the request, just like we dealt with some of the prior requests, I'm willing to listen. I realize it's late in the day, but I'm not ever going to just rush to judgment. If there's a concern you have, let me know with a little bit of particularity so I can address it. But I do think they have -- for example, they have a right, just like we talked about before, and your client has a right to test certain aspects of their case, they have a right to test whether or not there's a valid construction loan agreement.

And, for example, I mean, I look at it and they do appear to be unlike, say hypothetically, just bank statements, but, for example, Request No. 1:

"All documents you relied upon in entering into the construction loan" -- I'm sorry, "construction line of credit."

Right? That's pretty specific. That's not asking for anything else, but anything that they were

given that they relied upon before they issued this "construction line of credit." That is all. Nothing more; nothing less.

Request No. 2:

"All communications between and among you, Front Sight, that relate or refer to the construction line of credit."

And it just seems to me, all documents -- I mean, No. 3 and No. 4, they're all going to one item, and that's the construction line of credit.

Now I'm looking at these. Then it goes to project dates. Right? I'm just kind of going through it a little bit.

Construction points, if any.

MR. ALDRICH: Okay. No. 14. No. 14 asks for:

"Documents relating to or reflecting Front Sight's financial status, including without limitation, financial statements, banking records, tax returns, accounting records."

They already have all that.

MR. GREER: But that would only be to the extent they were in the lender's possession as part of the construction loan agreement, which would show if they had those things, it would tend to prove plaintiff's case that it was a legitimate process. If

they don't have any of those, it would tend to, I think, support defendant's position that it was not a legitimate process.

THE COURT: Well, for example, No. 14 potentially could be tweaked to reflect No. 15. And what I mean by that is this. No. 14 says:

"All documents referring to, related to, or reflecting Front Sight's financial status, including without limitations, financial statements, banking records, tax returns, and accounting rules."

But No. 15 -- and this is a very cursory review by me on the bench. No. 15 says:

"All documents that refer or relate to any of the Front Sight -- Front Sight's books and records you have reviewed."

MR. GREER: Yeah. The reason the two of those are distinct are, One, if they have any documents in their possession relating to that item; but, Two, if they went to Front Sight's, you know, offices and they reviewed books, they don't have copies themselves, maybe they just decided to go over and look at the books and records at Front Sight. They wouldn't keep copies, but they would say in their records, Today we reviewed, you know, whatever the progress was on the

project or reviewed the cash flow statements, whatever, with Mr. Piazza at his offices, or anything like that. That was just things they might not have, but they actually reviewed.

MR. ALDRICH: All right. So Request No. 24, I see where the Court is so I'm going to jump down a couple of those. Request No. 24:

"All documents reflecting communications between or among Top Rank Builders, Inc., Morales Construction Inc,. All American Concrete and Masonry, Inc., regarding the project."

Those are third party to third party communications.

No. 25:

"All documents reflecting contracts between Front Sight and Top Rank Builders, other than relating to the construction line of credit or project."

Now we're outside the construction line.

THE COURT: These are -- Mr. Aldrich, these are the points you needed to bring up to me. I mean, really, they are.

Are there more in here you want me to look at, sir?

MR. ALDRICH: No. 26:

"All documents reflecting the business relationship between Top Rank Builders, Morales, and All American."

Again, not relevant. Overbroad.

Communications with the Nye County planning department, No. 27.

MR. GREER: Your Honor, this is -- these are -- a lot of these are based in part on Front Sight not giving us any information about the projects. So this was designed -- if there were discussions about any pertinence or any type of research into the project involving communications with Nye County and Front Sight's construction, which is the project, that would be relevant too.

With regard to the communications between these three folks and what their relationship is, they're all three together on -- on the line of credits. They all three have the same president. They're all three the same office address. And so I was trying to figure out how they're related. So that was -- and actually, you know what, each of these -- every one of these, excuse me, every one of these has to do with the project.

Communications between you three regarding the

project. Communications with Front Sight regarding the project. Everything in there is related to -- it's all limited by the project. It's limited by time, by scope and by subject.

Yeah, that's right. They were the lenders and the ones working on the project. They are the ones doing the work.

MR. ALDRICH: So, your Honor, I reviewed the rest, and I think I've noted everything, but 25 is not related to the project.

MR. GREER: It's not? I thought it was.

MR. ALDRICH: I'm looking at All American. There was some confusion. This one -- for the record:

"All documents reflecting contracts between Front Sight and Top Rank Builders, Inc., other than relating to the construction line of credit or the project."

So that's everything not related to the project.

MR. GREER: Again, this was establishing the relationship between the parties and if there was any type of quid pro quo going on on a sham line of credit.

THE COURT: You have a few more minutes, Mr. Aldrich. You can take your time and look at it from, like, 28 on.

(Brief pause in proceedings.)

MR. ALDRICH: The only other one, No. 32, related to communications relevant to the litigation. I don't know that that's relevant to anything. I looked at the other ones.

THE COURT: Okay.

MR. ALDRICH: And based on the Court's comments previously, I understand how the Court's going to find on those.

MR. GREER: And I think you'll notice the theme throughout, your Honor, is this is all caused by Front Sight, we allege, who breached the contract, not providing the information that's needed. There are reports due to the immigration services coming up shortly. The vast majority of the information requested here has to do with that. The remainder of the information has to do with whether or not that line of credit is really a line of credit or whether it's a sham: The two basic themes throughout which are both relevant.

THE COURT: Mr. Aldrich, other than the ones that have been pointed out, are there any other ones you want me to look at?

MR. ALDRICH: I don't have anything else to add, your Honor.

THE COURT: All right. For the record, it's my understanding there were objections to Requests No. 14, 24, 25, 26, 27, and 32. And by my notes, regarding 14 --

MR. ALDRICH: Your Honor, I'm sorry, I just want to be clear. So I was operating off of the Top Rank --

THE COURT: I think that's --

MR. ALDRICH: -- ones. The numbering is a little bit different because there's some typos. So would this be -- if there are some that the Court is going to limit on, you may want to read that into the record so we can make sure we have the right ones.

THE COURT: Okay.

MR. ALDRICH: Yeah. And there is -- 24 and 25 are -- there is a couple of --

THE COURT: You know what I'm going to do? In light of -- I know -- I understand what the respective positions of the parties are, and I think out of fundamental fairness, I'm not going to rush. If you want to -- when you get back to your office over the next day or two, and just file me some sort of document as to the ones you object to, I will at least look at that.

I understand, Mr. Greer, what your position

is. I get it.

MR. GREER: Yeah. We need it fast because we got reporting --

THE COURT: Fast.

MR. GREER: -- requirements coming. We're not getting it from there.

THE COURT: I know, but I'm going to give him -- I'm not going to give him a week or two, just within the next 48 hours.

And what I'll do, as soon as I get that, I'll look at it. Because, for example, this is kind of how I look at it, but I want to make sure he itemizes every one so I've looked at it. I don't want to rush.

But, for example, there's an objection to Request No. 4, and I think this is under Top Rank. Let me look to make sure. And -- but I'll go through each one. I think it's the first one. Is that -- who's the tort. Yeah, it's Top Rank. And there's an objection to No. 24 that's been lodged by Mr. Aldrich. That one, after reviewing it, I don't mind telling you, I'm going to overrule that objection.

But, for example, No. 25, there's an objection. And it's all documents reflecting contracts between Front Sight, Top Rank Builders, and -- and relating to the construction agreement. I'm going to

grant that one because I think that's going a little bit too far. But the gist of most of what you're requesting, I understand why.

But what I want to do is this: I'm going to go back and look at each one with particularity. But I don't want you to be at a disadvantage, Mr. Aldrich, and just -- we cram it down. I want to give you a chance to look at it. You can lodge it. And then I'll go through it and read each one. And I just want everybody to understand, for example, I get what you're doing here, Counsel, Ms. Holbert, and Mr. Greer.

You're looking to see, Look. For example, Request No. 1, which I think is clearly appropriate:

"All documents that you used or relied upon in entering into the construction loan line of credit."

It's like the first example I gave is regarding Bank of America in a HELOC. The same thing; right?

MR. GREER: You know, do you know which ones you object to? I don't mind dealing with it if I can stip to it. I'd rather have some clean requests and get this thing rolling.

THE COURT: If you want to stip and narrow, maybe have the items that -- I mean, I'll give you a

few minutes. We'll step down and you can talk.

MR. ALDRICH: Just one second.

MR. GREER: Yeah.

THE COURT: For example, No. 1 is pretty good.

MR. ALDRICH: Okay.

MR. GREER: Understood.

MR. ALDRICH: Your Honor, I'm going to provide the objections.

THE COURT: Yes.

MR. ALDRICH: No later than Friday.

THE COURT: Okay.

MR. ALDRICH: Today is Wednesday, so no later than Friday. I will try to do it in an easy way that the Court can turn that around pretty quickly.

THE COURT: Right.

MR. ALDRICH: Okay.

THE COURT: Okay. I understand. And I think it's important to do that for the record. Because I don't want to rush you out of here, but we'll get it done. And if you get me -- I can --

Can you remind me to do this Monday? We're in trial; right?

I'm going to have my court clerk remind me once I get the objections to do a minute order on Monday, just kind of go through them. And this is one

that's -- that's -- it will be, I think, easier for me to make that quick turnaround than it would on other issues that are more complex.

Sir.

MR. ALDRICH: If I may, I have a suggestion to help with that. If it pleases the Court, perhaps we could provide a Word document with the specific requests in there, so literally the Court can instruct whoever is doing it to hit enter and type in "overrule" or whatever. Speed it up so we wouldn't have to retype. We don't do that very often in state court, but I'd be happy to offer to do that.

MS. HOLBERT: I can do it. I've already got it in Word.

MR. ALDRICH: Yeah.

MS. HOLBERT: So I can send you the Word of the 30 or however many there are, make sure that there aren't any typos and it's clean. I'll be happy to send it to you first. In fact, I'll send it to you first if you want and then you can make it red line, I object to this. Then he can red line --

MR. GREER: In fact, why don't we send -- go through -- and there's a couple of numbering issues in there. Let's just clean them all up and send the Court a clean copy and him a clean copy, and when we're done

we'll have a nice --

MS. HOLBERT: Yeah, I'm happy to do that.

THE COURT: But to be candid with you, I want to tell everybody, all I would do is issue a simple minute order --

MS. HOLBERT: Right.

THE COURT: -- where, okay, Request No. 1, granted.

Request No. 2, denied.

MS. HOLBERT: Perfect.

MR. ALDRICH: Okay.

THE COURT: That's all.

MS. HOLBERT: Right.

MR. GREER: Keep it simple.

MR. ALDRICH: We'll work on a way that makes it make sense, because one of them doesn't have the typos, and we'll get it cleaned up. We will get it submitted to the Court. But I was just offering that in case the Court wanted to do it that way.

THE COURT: No. We'll make it really, really simple.

Mr. Aldrich, I want to make sure you have a chance, sir, to sit back and reflect.

MR. ALDRICH: Um-hum.

THE COURT: Versus on the run.

MR. ALDRICH: I appreciate that.

MS. HOLBERT: And for the record, your Honor, we, of course, sent these starred with notices of intent to serve. They have not yet been served, so --

THE COURT: Okay.

MS. HOLBERT: -- they're set for the 17th, but we will, of course, get a new date. So they have not actually been served. So I don't think we need any interim order to stay or anything.

THE COURT: And -- and here's the thing. You can always ask to reconsider issues; right? I'm not going to --

But is there anything else I need to know? Because I understand what your position is. It's focusing, Look, what did they rely upon to issue this line of credit; right? That's basically what it is. And I get it.

And if, for whatever reason, after I issue my decision, if there's something there you want to -- I'm not saying you're waiving your right to come back again, but ultimately, who knows. When you get all the documents, for example, Request No. 1 might cover everything. Right?

MR. ALDRICH: All right. Anyway, your Honor, we appreciate your time today.

MS. HOLBERT: Yes.

THE COURT: Okay.

MR. GREER: Thank you, your Honor.

THE COURT: Enjoy your day.

MS. HOLBERT: Thank you.

THE COURT: And remind me.

In fact, as far as the requests are concerned, you're going to be sending me new requests; right? So I don't have to rely upon these. I just need to go back through them again.

MS. HOLBERT: Correct. Right?

MR. GREER: What?

MS. HOLBERT: You'll actually deliver that to him in a hard copy so that he's got a clean hard copy of what he needs to deal with?

MR. ALDRICH: Yeah. I figure I'd just file a supplement.

MS. HOLBERT: Okay. Right. Right.

(Proceedings were concluded.)

* * * * * * * * *

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF NEVADA.

_____
PEGGY ISOM, RMR, CCR 541

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Register of Actions
Case No. A-18-781084-B

Front Sight Management LLC, Plaintiff(s) vs. Las Vegas Development Fund LLC, Defendant(s)

Case Type: **Other Business Court Matters**
Date Filed: **09/14/2018**
Location: **Department 16**
Cross-Reference Case Number: **A781084**

Party Information

		Lead Attorneys
Counter Claimant	**Las Vegas Development Fund LLC**	**Anthony T. Case** *Retained* 702-579-3900(W)
Counter Defendant	**Front Sight Management LLC**	**John P. Aldrich** *Retained* 702-863-5490(W)
Counter Defendant	**Piazza, Ignatius**	**John P. Aldrich** *Retained* 702-863-5490(W)
Counter Defendant	**Piazza, Jennifer**	**John P. Aldrich** *Retained* 702-863-5490(W)
Counter Defendant	**VNV Dynasty Trust I**	**John P. Aldrich** *Retained* 702-863-5490(W)
Counter Defendant	**VNV Dynasty Trust II**	**John P. Aldrich** *Retained* 702-863-5490(W)
Defendant	**Chicago Title Company**	**Marni Rubin-Watkins** *Retained* 702-667-3000(W)
Defendant	**Dziubla, Robert W.**	**Anthony T. Case** *Retained* 702-579-3900(W)
Defendant	**EB5 Impact Advisors LLC**	**Anthony T. Case** *Retained* 702-579-3900(W)
Defendant	**EB5 Impact Capital Regional Center LLC**	**Anthony T. Case** *Retained* 702-579-3900(W)
Defendant	**Fleming, Jon**	**Anthony T. Case** *Retained* 702-579-3900(W)
Defendant	**Las Vegas Development Fund LLC**	**Anthony T. Case** *Retained* 702-579-3900(W)
Defendant	**Stanwood, Linda**	**Anthony T. Case** *Retained* 702-579-3900(W)

Plaintiff	**Front Sight Management LLC**	**John P. Aldrich** *Retained* 702-863-5490(W)
Trustee	**Piazza, Ignatius**	**John P. Aldrich** *Retained* 702-863-5490(W)
Trustee	**Piazza, Jennifer**	**John P. Aldrich** *Retained* 702-863-5490(W)

EVENTS & ORDERS OF THE COURT

10/09/2019 **All Pending Motions** (1:15 PM) (Judicial Officer Williams, Timothy C.)

Minutes

10/09/2019 1:15 PM

- Colloquy regarding Pltf's Motion to Extinguish and whether there is necessity reschedule the matter as well as a conference call if matter should be moved. Mr. Greer advised no objection to hearing the matter 10/23/19. COURT ORDERED, Motion to Extinguish ADVANCED from 11/13/19 to 10/23/19; Status Conference SET 10/11/19 at 4:00 p.m. to determine if matter should be reset. Court stated parties may attend telephonically via CourtCall. Colloquy regarding status of Motion to Dissolve Temporary Restraining Order ("TRO") and Appoint a Receiver in light of hearing the Motion to Extinguish. COURT FURTHER ORDERED, Motion to Dissolve TRO and Appoint Receiver DEFERRED to time of 10/23/19 hearing. LVD FUND'S MOTION TO BIFURCATE Arguments by Mr. Greer and Mr. Aldrich. COURT ORDERED, Motion DENIED WITHOUT PREJUDICE. Prevailing party to submit the order. SUPPLEMENTAL EARLY CASE CONFERENCE Colloquy regarding status of case in light of Counter-Deft. party. There being no objection, Court notes today's conference satisfies requirements of Rule 16.1 with respect to Counter-Deft. Further, Court directed supplemental conference report be filed. STATUS CHECK: RULE 65(A)(2) NOTICE...STATUS CHECK: SETTING CONTINUED PRELIMINARY INJUNCTION HEARING AND MOTION FOR PROTECTIVE ORDER Colloquy regarding anticipated case activity and possible duplicative presentation with respect to evidentiary hearing and rescheduling of same. COURT ORDERED, Status Check CONTINUED to 10/23/19 regarding setting continued days for the evidentiary hearing. DEFENDANTS MOTION TO QUASH SUBPOENA FOR DEPOSITION AND DOCUMENTS TO EMPYREAN WEST C/O JAY CARTER AND/OR MOTION FOR PROTECTIVE ORDER REGARDING SUBPOENA FOR DEPOSITION AND DOCUMENTS TO EMPYREAN WEST C/O JAY CARTER...DEFENDANTS MOTION TO QUASH SUBPOENA TO DAVID C. KELLER AND/OR MOTION FOR PROTECTIVE ORDER REGARDING SUBPOENA TO DAVID C. KELLER...DEFENDANTS MOTION TO QUASH SUBPOENA FOR DEPOSITION AND DOCUMENTS TO EMPYREAN WEST C/O JAY CARTER AND/OR MOTION FOR PROTECTIVE ORDER REGARDING SUBPOENA FOR DEPOSITION AND DOCUMENTS TO EMPYREAN WEST C/O JAY CARTER...DEFENDANTS MOTION TO QUASH SUBPOENA FOR DEPOSITION AND DOCUMENTS TO SEAN WASAKI FLYNN AND/OR MOTION FOR PROTECTIVE ORDER REGARDING SUBPOENA FOR DEPOSITION AND DOCUMENTS TO SEAN WASAKI FLYNN Arguments by counsel. COURT ORDERED, Motions with respect to Empyrean West, Jay Carter, and David Keller, GRANTED IN PART and DENIED IN PART; protective order to issue as discussed. Court directed Mr. Aldrich to prepare the order. As to Motion to Quash relating to Sean Flynn, Mr. Greer advised terms of agreement with counsel including a type of privilege log for any unproduced documents. Mr. Aldrich confirmed matter resolved. Court so noted. DEFENDANTS MOTION TO QUASH SUBPOENA FOR DEPOSITION AND DOCUMENTS TO WELLS FARGO BANK AND/OR MOTION FOR PROTECTIVE ORDER REGARDING SUBPOENA FOR DEPOSITION AND DOCUMENTS TO WELLS FARGO BANK...DEFENDANTS MOTION TO QUASH SUBPOENA FOR DEPOSITION AND DOCUMENTS TO OPEN BANK AND/OR MOTION FOR PROTECTIVE ORDER REGARDING SUBPOENA FOR DEPOSITION AND DOCUMENTS TO OPEN BANK...DEFENDANTS MOTION TO QUASH SUBPOENA FOR DEPOSITION AND DOCUMENTS TO BANK OF HOPE AND/OR MOTION FOR PROTECTIVE ORDER REGARDING SUBPOENA

FOR DEPOSITION AND DOCUMENTS TO BANK OF HOPE...DEFENDANTS MOTION TO QUASH SUBPOENA FOR DEPOSITION AND DOCUMENTS TO SIGNATURE BANK AND/OR MOTION FOR PROTECTIVE ORDER REGARDING SUBPOENA FOR DEPOSITION AND DOCUMENTS TO SIGNATURE BANK Arguments by counsel. COURT ORDERED, Motions GRANTED WITHOUT PREJUDICE; must specify claim for relief; decision has no impact on requests for production. Prevailing party to submit the order. PLAINTIFF'S MOTION TO QUASH SUBPOENAS TO THIRD PARTIES Arguments by counsel. Court directed Mr. Aldrich within 48 hours to submit each objection with particularity. Court stated will issue Minute Order decision on following Monday. 10/11/19 4:00 PM STATUS CONFERENCE RE: STATUS OF MOTION TO EXTINGUISH 10/23/19 9:00 AM PLTF'S MOTION TO EXTINGUISH CONTINUED TO: 10/23/19 9:00 AM STATUS CHECK: SETTING CONTINUED PRELIMINARY INJUNCTION HEARING AND MOTION FOR PROTECTIVE ORDER...LVD FUND'S MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO APPOINT A RECEIVER CLERK'S NOTE: Minutes corrected. /cd 10-10-19/

Parties Present
Return to Register of Actions

Electronically Filed
10/14/2019 11:59 PM
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CLERK OF THE COURT

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a Nevada Limited Liability Company, Plaintiff, vs. LAS VEGAS DEVELOPMENT FUND LLC, et al., Defendants. _____ AND RELATED CROSS ACTION _____	CASE NO.: A-18-781084-B DEPT NO.: 16 **DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S, OPPOSITION TO PLAINTIFF'S MOTION TO EXTINGUISH LVDF'S DEED OF TRUST** Hearing Date: October 23, 2019 Time: 9:00 a.m. Department 16

Defendant LAS VEGAS DEVELOPMENT FUND LLC ("LVD Fund" or "Lender"), hereby submits this OPPOSITION TO PLAINTIFF'S MOTION TO EXTINGUISH LVDF'S DEED OF TRUST, OR ALTERNATIVELY TO GRANT LENDER ROMSPEN A FIRST LIEN POSITION, AND MOTION TO DEPOSIT FUNDS PURSUANT TO NRCP 67. By this Opposition, Defendant/Counter-Claimant LVD Fund demonstrates that there is no legal or factual basis for this motion and to grant it would be a manifest abuse of discretion.

This Opposition is based on the pleadings and papers on file herein, the Memorandum of Points and Authorities attached hereto and incorporated herein by this reference, the Declaration of C. Keith Greer filed herewith, the testimony of Robert Dziubla and Ignatius Piazza given in the preliminary injunction evidentiary hearings, the declarations and memorandum filed by LVD Fund in support of the currently pending motion for relief from the TRO and appointment of a receiver, and such other and further oral or written evidence as may be presented at the hearing for this Motion.

Dated: October 14, 2019

FARMER CASE & FEDOR
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/s/ Kathryn Holbert
Kathryn Holbert, Esq.
Attorney for Defendants

LAS VEGAS DEVELOPMENT FUND LLC, a Nevada Limited Liability Company; EB5 IMPACT CAPITAL REGIONAL CENTER, LLC, a Nevada Limited Liability Company; EB5 IMPACT ADVISORS LLC, a Nevada Limited Liability Company; ROBERT W. DZIUBLA, an individual; JON FLEMING; an individual; and LINDA STANWOOD, an individual.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's motion is an exercise in misdirection. Although captioned as a "Motion to Extinguish LVDF's Deed of Trust" or "to Grant Senior Debt Lender Romspen a First Lien Position" and "Deposit Funds Pursuant to NRCP 67," the Motion is actually a Motion to short circuit the trial process and obtain an order granting Summary Judgment pursuant to NRCP 56 without following the clearly defined procedures for obtaining such relief. Moreover, setting aside the fact that the Construction Loan Agreement ("CLA") and Deed of Trust do not allow for early payoff of any portion of the loan until the EB-5 Investors have received final adjudication of his our her I-829 petition removing conditions of permanent residency, Front Sight is seeking an order extinguishing the Deed of Trust due to early pay off **without actually offering to pay off the loan**. Instead, Front Sight proposes placing the funds (which remain illusory until Front Sight submits an actual loan agreement as opposed to a letter of intent), into an account to which LVD Fund will not have access pursuant to NRCP 67. This is certainly NOT an actual payoff of the LVD Fund CLA and Deed of Trust.

A careful reading of the Motion and the supporting information reveals that there is no loan at this time. Fundamentally, a loan commitment is NOT a loan. All that Front Sight offers in support of its motion is a loan commitment; not an actual loan. Moreover, the moving papers make clear that Front Sight has no intention of actually paying off the LVD Fund CLA and Deed of Trust if any money ever becomes available from Romspen. A payment to the court pursuant to NRCP 67 is not a prepayment of the existing LVD Fund CLA and Deed of Trust. Front Sight does not actually suggest paying a single dollar to LVD Fund to cure it's existing default under the CLA and Deed of Trust. Nor does Front Sight make any effort to explain how it will cure the numerous performance defaults compromising the rights of the EB5 Investors and LVD Fund's ability to meet his obligation to keep the USCIS apprized of the project's status and compliance with USCIS guidelines.

If Front Sight had an actual loan and was actually proposing to prepay the loan, LVD Fund might have a different response to the present motion. Front Sight, however, does not have

an actual loan and does not propose paying a single dollar to LVD Fund to prepay the CLA and Deed of Trust. Instead, Front Sight proposes the most unusual loan payoff in history, whereby the lender will not receive a single dollar. Yet based on this non-payoff, Front Sight asks this court to extinguish Lender's valid Deed of Trust without receiving so much as one dollar in payment on the loan and without Front Sight curing the multiple performance breaches that have been presented to this court on numerous occasions, the performance of which is also secured by the Deed of Trust.

Front Sight further proposes accomplishing this non-payoff into a blocked account by using the proceeds of a loan it does not actually have. Indeed, although Front Sight repeatedly refers to a "loan commitment" from Romspen, Front Sight tellingly says nothing about actual loan documents or an actual loan[1].

Front Sight has been in default for over a year under the terms of the CLA and Deed of Trust. In addition to Front Sight's multiple performance defaults which triggered the initial defaults, there can be no dispute that Front Sight has further defaulted on all monetary obligations under the CLA and Deed of Trust since at least July 1, 2019. The result is that Front Sight is now at least three months in default in its monthly payment obligations to pay default interest based on the missed payments for July, August and September, and it is well past the time to cure such defaults. *See*, N.R.S. §107.080; *Hankins v. Adm'r of Veterans Affairs*, 92 Nev. 578, 580 (1976)("There being no right of redemption in this type of proceedings, NRS 107.080(5), the tender of payment was properly refused.").

Further, Front Sight cannot avail itself of the Deposit Rule of NRCP 67 because that rule is only available where the party who is making the deposit "has admitted that it owes any or all of the funds at issue to another party". *Peke Res., Inc. v. Fifth Judicial Dist. Court In & For Cty. of Esmeralda*, 113 Nev. 1062, 1067 847 (1997). Because Front Sight seeks to deposit funds with the court with "so all parties with competing claims are protected, and the Court ensures the

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[1] This is not the first time Front Sight has claimed to have a loan commitment or pending financing. None of the prior claims by Front Sight regarding loan commitments actually turned into an actual loan. *See,* Statement of Facts Relevant to the Present Motion, *infra.*

money is available to the prevailing party, " (MOT at 19:2-3), Front Sigh has manifestly NOT "admitted that it owes any or all of the funds at issue." Therefore, NRCP Rule 67 is not available to Front Sight to make a conditional deposit of funds as to which Front Sight still asserts a claim.

Front Sight's motion is an exercise in misdirection and sleight of hand worthy of a Las Vegas magician. It's eleventh hour effort to forestall foreclosure through a loan "commitment" and non-payment of the loan to lender should be rejected. The court should see through the facade and deny the motion.

II. STATEMENT OF FACTS RELEVANT TO THE PRESENT MOTION

Despite Front Sight's repeated efforts to poison the well by repeating its litany of allegations of alleged wrongdoing by Defendants which are unsupported by competent evidence and irrelevant to the present motion, the facts actually relevant to the present motion are relatively straightforward. The **only** issues raised by the current motion are: (1) whether Front Sight has a right to cure it's multiple defaults under the CLA and Deed of Trust; (2) whether Front Sight has a right to prepay the CLA and Deed of Trust; (3) whether Front Sight has fulfilled the conditions required under the CLA and Deed of Trust to obtain senior indebtedness; (4) whether Front Sight has actually secured qualifying senior indebtedness; and (5) whether Front Sight is actually tendering prepayment of the CLA and Deed of Trust or whether Front Sight is making an illusory offer of no payment whatsoever on the CLA and Deed of Trust. The facts actually relevant to these issues are relatively simple and straightforward.

On or about October 6, 2016,[2] Front Sight and LVD Fund entered into a Construction Loan Agreement ("CLA"). The CLA was secured by a Deed of Trust executed on October 6, 2016 and recorded with the Nye County Recorders Office on October 13, 2016. LVD Fund loaned Front Sight approximately $6.375 million pursuant to the CLA and Deed of Trust.

LVD Fund alleges that Front Sight is - and has been for more than a year - in default under the terms of the CLA and Deed of Trust. The defaults are summarized very briefly below

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[2] The cover page for the CLA states it is dated October 6, 2016, although the first paragraph of the CLA recites the date as October 4. LVD Fund believes the CLA was actually executed on October 6 although the difference in dates is immaterial for presnt purposes.

and are set forth more fully in LVD Fund's filings herein, including LVD Fund's Opposition to Motion for Preliminary Injunction regarding the Foreclosure, and Motions for Appointment of a Receiver, as well as in other filings.

A. Front Sight's Performance Breaches and Default under the CLA

As the court is well aware, evidence has been presented in these proceedings to support LVD Fund's allegations that Front Sight has failed to comply with literally every one of its performance obligations under the CLA, including:

1. Improper Use of Loan Proceeds - CLA § 1.7(e);
   (The diversion of more $16 million);
2. Failure to Provide Government Approved Plans-CLA §3.2(b)
   (Ignatius Piazza confirmed no plans even exist);
3. Failure to Timely Complete Construction - CLA § 5.1
   (Which was required to be completer by 10/4/19);
4. Material Change of Costs, Scope or Timing of Work - CLA § 5.2;
5. Refusal to Comply Regarding Senior Debt - CLA 5.27 §;
6. Failure to Provide Monthly Project Costs - CLA § 3.2(a);
7. Failure to Notify of Event of Default - CLA § 5.10;
8. Refusal to Allow Inspection of Records - CLA § 5.4;
9. Refusal to Allow Inspection of the Project - CLA § 3.3.; and
10. Failure to Provide EB-5 Information - CLA § 1.7(f).

Performance of these obligations is of critical importance to the EB-5 Investors and is necessary for LVD Fund to comply with its USCIS reporting requirements. That is why such performance is also secured by the Deed of Trust. Therefore, expunging the Deed of Trust prior to Front Sight fully complying with these requirements would be wholly inappropriate.

B. Front Sight's Monetary Breaches and Default of the CLA

In addition to the performance breaches, Front Sight has breached its monetary obligations under the CLA and Deed of Trust. The issue of Front Sight missing three months of

interest payments for July through September was discussed in open court, and copies of the Default Notices have been filed with the court each month. While Front Sight did finally make pay the past due interest payments, it has not paid the default interest and penalties associated with the late payments. Moreover, as confirmed by the previously filed Declarations of Robert Dziubla, Front Sight has not paid any of the default interest required pursuant to Section 1.2 of the CLA due to the above-referenced breaches. Nor has it paid the legal fees required under Section 8.2 of the CLA. Front Sight is clearly aware of the amount necessary to cure these defaults, as it argues putting $700,000 aside in addition to the loan principle would be sufficient. That said, at this time Front Sight is in default of all performance and monetary provisions of the CLA and Deed of Trust.

C. The Obligation to Obtain Senior Debt

Front Sight was required to obtain Senior Debt from a "traditional construction lender," originally by March 31, 2016 (CLA, pg. 11 "Senior Debt" defined), then was given an extension to December 31, 2017 (First Amended to CLA), and then was given and extension to June 30, 2018 (CLA Second Amend., ¶1). The deadline to provide Senior Debt expired nearly sixteen (16) months ago.

1. Prior "Loan Commitments"

Front Sight previously claimed on at least two prior occasions to have obtained such senior debt and even provided copies of loan commitment letters to that effect. (Greer Decl. Exs. 1 (11/3/17 commitment letter) and 2 (9/2/16 commitment letter)). Neither of those prior commitment letters resulted in an actual loan, and there is no reason to believe the result will be any different with the current letter.

2. The Romspen "Commitment" Letter

Front Sight provides a "Loan Commitment Letter" from Romspen as proposed new Senior Debt. First, it must be noted that this is simply a commitment letter and is NOT an actual loan. Nor does Front Sight provide fully executed loan documents or even current drafts of proposed loan documents.

Further, Romspen does not appear to be a "traditional financial institution specializing in

financing projects such as the Project" as required by the CLA §1.1.3. In fact, Romspen's website describes Romspen as a "Canadian **non-bank** mortgage lender." [3] (emphasis added). In contrast to the required "traditional financial institution" lender, "Romspen had its origins in the 1950's as an adjunct business to the real estate law practice of Louis W. Spencer, the managing partner of Spencer Romberg, a Toronto law firm."[4] Romspen simply does not appear to be the required institutional lender. Romspen does not even describe itself as an institutional lender, but rather as a "Mortgage Investment Fund." [5] At a minimum, the court should require more support for the *bona fides* of Romspen before granting the radial relief requested by Front Sight.

D. The Alleged Prepayment is Illusory

Although Front Sight claims a right to prepay the LVD Fund CLA and Deed of Trust, a simple reading of the Motion reveals that Front Sight never proposes actually prepaying anything. Instead, Front Sight proposes a deposit of funds with the court that will be available to the "prevailing party". (MOT at 19:3-4). Far from being an unconditional tender to payoff the CLA and Deed of Trust as Front Sight would have this court believe (and as is required to pay off the CLA and Deed of Trust) this appears to be some form of a litigation security bond which is not an authorized use of NRCP 67.

III. ARGUMENT

A. Front Sight's Motion Is Actually a Procedurally Defective Motion for Summary Judgment

Although it is not clearly revealed in the Caption for the Motion, Front Sight's Motion is really a Motion for Summary Judgment, masquerading as a less drastic motion, in an apparent effort to evade the procedural requirements of a Rule 56 Motion for Summary Judgment. This is actually revealed in the first sentence of the Notice of Motion which states that Front Sight

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[3] http://www.romspen.com/about-romspen/at-a-glance/default.aspx

[4] http://www.romspen.com/about-romspen/history/default.aspx

[5] http://www.romspen.com/investing/fund-introduction/romspen-mortgage-investment-fund.aspx

"hereby moves the Court for declaratory relief adjudicating the parties' rights under the Construction Loan Agreement ("CLA") and other Loan Documents **and for summary judgment as to LVDF's Counterclaim** . . .". (Mot 1:23-26).(emphasis added).

As such, the Motion violates Local Rule 7.20(5) which requires "[t]he title [of the pleading] must be sufficient in description to apprise the respondent and clerk of the nature of the document filed, or the relief sought, e.g., Plaintiff's Motion to Compel Answers to Interrogatories; **Defendant's Motion for Summary Judgment** against Plaintiff John Doe; Order Granting Plaintiff Doe's Motion for Summary Judgment against Defendant Roe." (Emphais added).

As a Motion for Summary Judgment, the Motion should actually be brought under NRCP Rule 56. The procedures governing such a motion are set forth in NRCP 56(c) and requires: "(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." NRCP 56(c). The rule further requires that "An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." NRCP56(c)(4). *See, Garvey v. Clark Cty., 91 Nev. 127, 130* (1975) ("appellants, however, offered nothing but the mere allegations of their complaint to support their position."); *Germaine Music v. Universal Songs of Polygram*, 275 F. Supp. 2d 1288, 1302 (D. Nev. 2003), aff'd in part, rev'd in part, 130 F. App'x 153 (9th Cir. 2005)(" Crook merely asserts his conclusions that he has proven his case as a matter of law and that UMG does not have evidence to win at trial. Such allegations fail to meet the moving burden on a Motion for Summary Judgment.")

Plaintiff's lengthy recitation of "facts" in support of its motion is largely a rehashing of Plaintiff's oft repeated and still unproven allegations of its complaint and a recitation of Plaintiff's claimed litany of wrongdoings by Defendants. Front Sight even seeks to evade the most basic

page limitation requirements by compiling a chart of its allegations which they brazenly acknowledge was done to evade page limitations.[6] The recitation is not supported by ANY competent evidence as required by NRCP Rule 56.

Plaintiff's Motion makes no attempt whatsoever to fulfill these procedural requirements.

B. Front Sight Has Not Demonstrated That it Has Secured an Actual Construction Loan

Front Sight attaches a "Commitment Letter" from Romspen to its motion and refers to the "Romspen Commitment." What Front Sight does NOT attach are actual loan documents. Nor does Front Sight even claim that Romspen has actually made a loan.

There is, of course, a significant difference between a "loan commitment" and an actual loan. *See, Fed. Sav. & Loan Ins. Corp. v. Gemini Mgmt.*, 921 F.2d 241, 245 (9th Cir. 1990)("Centennial's "intent" to loan the additional $445,000 falls short of establishing that Centennial was obligated to fund the entire project " contrasting commitment letter "not evidenced by a promissory note" with second commitment letter "supported by fullloan documentation.").

This difference between a loan commitment and an actual loan is demonstrated by the factual history herein. The Romspen letter is NOT the first time Front Sight has claimed to have a "loan commitment" for Senior Debt herein. As noted in the Statement of Facts above, this is at least the third such "loan commitment". None of the previous claimed "loan commitments" actually materialized into a real loan. Thus, the existence of a "loan commitment" without full dcumentation and actual funding should be summarily rejected by the court.

C. Front Sight Has Failed to Meet The Requirements of the CLA and Deed of Trust Relating to Senior Debt

Front Sight urges that it has a contractual right to obtain Senior Debt. (MOT 9 - 14). Front

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[6] Front Sight makes no secret of their end run around the page limitations stating Defendants have engaged in "so many fraudulent misrepresentations that they cannot all be included in a statement of facts in this brief because the brief would grossly exceed the page limit." Exhibit 1" (Mot at 4:5-10). The "chart" however, is a hodgepodge of hearsay statements that does not qualify as competent evidence.

Sight, however, conveniently ignores two critical factors: (1) the deadline to obtain Senior Debt expired on June 30, 2018, nearly sixteen months ago (CLA 2nd Amend., ¶1); and (2) Front Sight is in default under the CLA and Deed of Trust. Thus, while Front Sight previously had a right to obtain Senior Debt, that right is long expired and cannot be revived *ex post facto*. This is particularly true since Front Sight is currently - and has been for over a year - in default under the CLA and Deed of Trust.

D. Front Sight Does Not Have a Right to Pay the Balance of the CLA and Deed of Trust

1. Front Sight Is Not Making a Valid Tender of Payment

Although Front Sight argues that it has a right to prepay the LVD Fund CLA and Deed of Trust (*See, e.g.*. MOT at 14:13- 18:20) it is clear from the Motion that Front Sight actually does not intend to pay a single dollar to LVD Fund to satisfy the CLA and Deed of Trust. (Mot at 19:3-4). *See infra* §III(E). Front Sight is very careful in its wording stating "Front Sight should be allowed to exercise its contractual right, under the CLA, to satisfy the Deed of Trust by tendering the $6,375,000 to LVDF." (Mot at 14:15-16). Significantly, Front Sight does not actually suggest that it intends to actually pay the CLA and Deed of Trust. Rather, Front Sight proposes "tendering" the money to the court and then fighting over who is entitled to the money. This is - quite simply - NOT a tender of the outstanding loan balance nor is it any payment to the lender. The common law definition of tender is an offer of payment that is coupled either with no conditions or only upon conditions upon which the tendering party has a right to insist.

"The essential requisites of tender are: (1) An unconditional offer to perform, coupled with a manifested ability to carry out the offer; (2) A production of the subject matter of the contract; (3) The property tendered must not be less than what is due; and (4) If greater, there must be no demand for a return of the excess." *Guy F. Atkinson Co. of California & Subsidiaries v. Comm'r*, 814 F.2d 1388, 1393 (9th Cir. 1987). "In addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a right to insist. 74 Am. Jur. 2d Tender § 22 (2012). "The only legal conditions which may be attached to a valid tender are either a receipt for full payment or a surrender of the obligation." Heath v. L.E. Schwartz & Sons, Inc.,

203 Ga.App. 91, 416 S.E.2d 113, 114-15 (1992)" *Bank of Am., N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. 604, 607 (2018), as amended on denial of reh'g (Nov. 13, 2018).

> [I]t is the generally accepted rule that a promise to make a payment at a later date or once a certain condition has been satisfied cannot constitute a valid tender. *See Southfork Invs. Grp., Inc. v. Williams*, 706 So.2d 75, 79 (Fla. Dist. Ct. App. 1998) ("To make an effective tender, the debtor must actually attempt to pay the sums due; mere offers to pay, or declarations that the debtor is willing to pay, are not enough."); *Cochran v. Griffith Energy Serv., Inc.*, 191 Md.App. 625, 993 A.2d 153, 166 (2010) ("A tender is an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." (internal quotation marks omitted)); *Graff v. Burnett*, 226 Neb. 710, 414 N.W.2d 271, 276 (1987) ("To determine whether a proper tender of payment has been made, we have stated that a tender is more than a mere offer to pay. A tender of payment is an offer to perform, ***coupled with the present ability of immediate performance,*** which, were it not for the refusal of cooperation by the party to whom tender is made, would immediately satisfy the condition or obligation for which the tender is made.")(emphasis added); *McDowell Welding & Pipefitting, Inc. v. U.S. Gypsum Co.*, 260 Or.App. 589, 320 P.3d 579, 585 (2014) ("In order to serve the same function as the production of money, a written offer of payment must communicate a present offer of timely payment. The prospect that payment might occur at some point in the future is not sufficient for a court to conclude that there has been a tender ...." (internal quotations,

citations, and alterations omitted)); cf. 74 Am. Jur. 2d Tender § 1 (2012) (recognizing the general rule that an offer to pay without actual payment is not a valid tender); 86 C.J.S. Tender § 24 (2017) (same).

Bank of Am., N.A. v. Thomas Jessup, LLC Series VII, 135 Nev. Adv. Op. 7, 435 P.3d 1217, 1219–20 (2019) .

Here, Front Sight's "tender" is conditioned on LVD Fund ultimately being the prevailing party in this litigation. *See* Mot at 19:3-4. That is no tender at all.

2. Front Sight Cannot Prepay the CLA and Deed of Trust Because Front Sight Is Currently In Default and the Time to Cure Has Expired

Front Sight is currently in default on the CLA and Deed of Trust and has been for well over a year. The initial Notice of Default was recorded on or about September 11, 2018. A Second Notice of Default and Election to Sell was recorded on January 18, 2019.

Pursuant to N.R.S. 107.080(2)(a)(2) borrower is given a 35-day period after the Notice of Default and Election to Sell "to make good the deficiency in performance or payment." N.R.S. § 107.080(2)(a)(2). The 35-day cure period expired long ago. Because this period has expired, Front Sight no longer has a legal right to "cure" or to "prepay" the loan.

3. The CLA and Deed of Trust Do Not Allow For Prepayment Until the EB-5 Investors I-829's have been Finally Adjudicated

"Front Sight acknowledges that a condition of the prepayment option is that Front Sight cannot repay the Loan while any Class B member of LVDF (in accordance with LVDF's operating agreement) is still awaiting final adjudication on his or her I-829 petition." (MOT 14:25 - 15:1). Front Sight then spends the next several pages arguing that "is equitably estopped from enforcing this language due to Defendants' breaches of the CLA and fraudulent conduct." (MOT at 15:1-3)[7].

[7] Front Sight's equitable estoppel argument is another example of Front Sight attempting to obtain summary judgment on the ultimate issues in this case without following the rigorous NRCP 56 requirements for such a motion.

Once again, Front Sight demonstrates that it has no intention of making an unconditional prepayment of the CLA and Deed of Trust by asserting its baseless allegations of "fraudulent conduct" by LVD Fund. However, despite Front Sight's claims of equitable estoppel the simple fact remains that Front Sight explicitly acknowledges that it has not met the contractual precursor requirement to permit prepayment.

Plaintiff bears the burden of proving each element of equitable estoppel. *Estate of Amaro v. City of Oakland*, 653 F.3d 808, 813 (9th Cir. 2011). "Whether the party seeking to establish equitable estoppel has met his or her burden is also generally a question of fact." *In re Harrison Living Tr.*, 121 Nev. 217, 222 (2005). "Equitable estoppel has been characterized as comprising four elements: (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped." *Cheqer, Inc. v. Painters & Decorators Joint Comm., Inc.*, 98 Nev. 609, 614 (1982). "Whether these elements are present, so that the doctrine of equitable estoppel should be applied, depends upon the particular facts and circumstances of a given case." *Cheqer, Inc. v. Painters & Decorators Joint Comm., Inc.*, 98 Nev. 609, 614 (1982)("Material questions of fact therefore remain, and summary judgment was inappropriate."). Despite the premature equitable estoppel argument, the simple fact remains, Front Sight explicitly acknowledges that it has not met the contractual prerequisite to permit prepayment.

Moreover, prepayment of the loan prior final adjudication of the EB-5 Investors' I-829 would eliminate the Investors' chances to successfully complete the EB-5 program because pursuant to 8 CFR 204.6(j)(2), "To show that the petitioner has invested or is actively in the process of investing . . . the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk." (emphasis added). If the loan is paid off, the capital is no longer at risk and thus will result in disqualification of the EB-5 Investors. This is true whether the prepayment is voluntary or court ordered.

E. Front Sight Cannot Utilize NRCP 67 to Make A Conditional Deposit With The Court

Front Sight's motion makes clear that Front Sight seeks to use NRCP 67 to make a Deposit as some form of security but only in the event Front Sight loses this litigation.

> Front Sight respectfully requests that this Court allow it to deposit approximately $7 million into the Court's coffers pursuant to Rule 67. The approximately $7 million constitutes $6.375 million in principal plus $700,000.00 **to cover what Defendants claim is due** for default interest, attorney's fees, and costs. **Although Front Sight disputes that it is in default, and the amounts claimed for alleged default interest, attorney's fees, and costs,** Front Sight is willing to deposit the full amount of Defendants' claim. By doing so, all parties with competing claims are protected, and **the Court ensures the money is available to the prevailing party,** or even the immigrant investors if appropriate.

Mot at 18:23 -19:4)(emphasis added). First, this makes it clear that Front Sight actually has no intention of using the funds from the Romspen loan to prepay the balance due on the LVD Fund CLA and Deed of Trust. Rather than using the Romspen loan proceeds to pay off the CLA, what Front Sight actually proposes is to use the loan proceeds to place in some sort of a blocked account for the parties to litigate over. This is manifestly NOT a prepayment of the CLA and Deed of Trust despite Front Sight's mischaracterization.

Moreover, under Nevada Supreme court decisional law, NRCP 67 is NOT available for this purpose. A party cannot be required to deposit that money or thing in court **unless it is either clearly admitted in his pleading or shown in some proceeding in the cause that he has himself no right to retain it and that the other party to the action is entitled to it** or at least has an absolute interest in it. In all cases it must appear that the party holds the money as trustee, or that it belongs or is due to another party. If the party alleged to hold as trustee claims title or right to all or part of the funds in his possession, the court is without jurisdiction to compel him to

surrender them by ordering a deposit in court, since this constitutes an issue which should not be tried in this summary manner, but one which requires a judicial determination, on the hearing of all the facts, that he has no right to the funds. If it appears from the proceedings that the right of the other party is dependent on his performance of some condition, or if the party applying for the order does not claim an immediate right to the money, or disputes the existence of the condition, the court will not order the money to be deposited before a hearing and judicial determination *Peke Res., Inc. v. Fifth Judicial Dist. Court In & For Cty. of Esmeralda*, 113 Nev. 1062, 1066–67 (1997) *quoting In re Elias*, 209 Cal.App.2d 262 (1962) (emphasis added).

Front Sight vigorously disputes that LVD Fund is entitled to the money and seeks to recover the money it wishes placed on deposit at the end of this litigation. NRCP 67 simply is not meant for, or available, for such a conditional deposit.

IV. CONCLUSION

As set forth above, this court should deny Plaintiff's Motion because: (1) it is procedurally defective; (2) it is illusory because no money is being put before the court and the offer is conditional; and (3) to grant the motion would violate the terms of the CLA and Deed of Trust and cause irreparable harm to the EB-5 investors.

Dated: October 14, 2019

FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Telephone: (702) 579-3900
Facsimile: (702) 739-3001

/s/ Kathryn Holbert
Kathryn Holbert, Esq.
Attorney for Defendants

CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Farmer Case & Fedor, and that on this date, I caused true and correct copies of the following document(s):

DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC, OPPOSITION TO MOTION TO EXTINGUISH DEED OF TRUST

to be served on the following individuals/entities, in the following manner,

John P. Aldrich, Esq.
Catherine Hernandez, Esq.
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146

Attorneys for Plaintiff
FRONT SIGHT MANAGEMENT, LLC

By:

■ ELECTRONIC SERVICE: Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).

■ U.S. MAIL: I deposited a true and correct copy of said document(s) in a sealed, postage prepaid envelope, in the United States Mail, to those parties and/or above named individuals which were not on the Court's electronic service list.

Dated: October 14, 2019

/s/ Kathryn Holbert
An Employee of FARMER CASE & FEDOR

Electronically Filed
10/15/2019 12:05 AM
Steven D. Grierson
CLERK OF THE COURT

DEC
C. Keith Greer, ESQ.
Admitted *pro hac vice*
keith.greer@greerlaw.biz
GREER AND ASSOCIATES, A PC
17150 Via Del Campo, Suite 100
San Diego, CA 92127
Telephone: (858) 613-6677
Facsimile: (858) 613-6680

ANTHONY T. CASE, ESQ.
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Attorneys for Defendants
LAS VEGAS DEVELOPMENT FUND LLC, EB5
IMPACT CAPITAL REGIONAL CENTER LLC,
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
JON FLEMING and LINDA STANWOOD

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a Nevada Limited Liability Company, Plaintiff, vs. LAS VEGAS DEVELOPMENT FUND LLC, et al., Defendants. AND RELATED CROSS ACTION	CASE NO.: A-18-781084-B DEPT NO.: 16 **DECLARATION OF C. KEITH GREER, ESQ. IN SUPPORT OF DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S, OPPOSITION TO PLAINTIFF'S MOTION TO EXTINGUISH LVDF'S DEED OF TRUST** Hearing Date: October 23, 2019 Time: 9:00 a.m. Department 16

Case Number: A-18-781084-B

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN DIEGO)

Affiant, hereby states and declares as follows:

1. I, C. Keith Greer, am an individual and a resident of the State of California, County of San Diego.

2. I am admitted as an attorney to the State Bar of California and I am admitted as counsel *pro hac vice* in the present action. I am counsel of record for LVD Fund in this matter.

3. I make this Affidavit of my personal knowledge and the matters stated herein are true and correct. If called as a witness herein, I could, and would, testify competently thereto.

4. Attached hereto as Exhibit 1 is a true and correct copy of the "Commitment Letter for Proposed Credit Facility" from US Capital Partners that was accepted and signed by Ignatius Piazza on November 3, 2017, produced in discovery by Front Sight.

5. Attached hereto as Exhibit 2 is a true and correct copy of the "Letter of Intent - Front Sight Expansion Loan" from Summit Financial and Investment Group, LLC that was accepted and signed by Ignatius Piazza on September 2, 2016, produced in discovery by Front Sight.

I declare under penalty of perjury under the laws of the State of Nevada and the State of California that the foregoing is true and correct, and that this Declaration was executed on October 14, 2019 at San Diego, California.

C. Keith Greer, Esq.

CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Farmer Case & Fedor, and that on this date, I caused true and correct copies of the following document(s):

DECLARATION OF C. KEITH GREER, ESQ. IN SUPPORT OF DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC'S, OPPOSITION TO PLAINTIFF'S MOTION TO EXTINGUISH LVDF'S DEED OF TRUST

to be served on the following individuals/entities, in the following manner,

John P. Aldrich, Esq.
Catherine Hernandez, Esq.
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146

Attorneys for Plaintiff
FRONT SIGHT MANAGEMENT, LLC

By:

■ ELECTRONIC SERVICE: Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).

Dated: October 14, 2019

/s/ Kathryn Holbert
An Employee of FARMER CASE & FEDOR

Exhibit 1

US CAPITAL PARTNERS
DEBT AND EQUITY FOR THE LOWER MIDDLE MARKET

US Capital Partners Inc.
555 Montgomery Street, Suite 1501, San Francisco, CA 94111
Tel. (415) 889-1010 Fax. (415) 723-7158
www.uscapitalpartners.net

November 3, 2017

Dr. Ignatius Piazza
Founder and Director
Front Sight Management, LLC
1 Front Sight Road
Pahrump, NV 89061

Re: Commitment Letter for Proposed Credit Facility

Dear Dr. Piazza,

We are pleased to advise you that US Capital Partners Inc. ("USCP") has completed its due diligence and underwriting on Front Sight Management, LLC ("Borrower"), and is extending its commitment for financing in accordance with the terms set forth in this letter and the schedules hereto (the "Commitment").

Assignment. USCP is pledging or assigning part or all of the Letter Agreement dated September 30, 2016 (the "Letter Agreement") to its assignee (the "Assignee") and the Borrower will reasonably cooperate in relation thereto with USCP and/or its Assignee (USCP and its Assignee, if applicable, being individually and/or collectively referred to in this letter as the "Lender"). The Proposed Credit Facility is subject to Lender's own specific terms and conditions, which are set forth on Schedule A.

Representations and Warranties. By executing this Commitment, Borrower hereby represents and warrants to Lender that all information submitted to Lender prior to the date of this Commitment and to be submitted prior to the closing of the Proposed Credit Facility is and will be true, correct, and complete. If Lender becomes aware after the date hereof of any information or any event, development, or change that it reasonably believes is inconsistent in a material and adverse manner with any information disclosed to Lender prior to the date hereof, and which is or is reasonably likely to be materially adverse to the business, assets, liabilities (actual or contingent), operations, or condition (financial or otherwise) of Borrower or any guarantor, then Lender, in its sole discretion, may suggest alternative financing terms, amounts, or structures that ensure adequate protection of Lender, or may terminate this Commitment.

Brokers. Other than a broker with whom Lender has directly contracted in writing, Lender will not be liable in any way for the payment of any brokerage fees or commissions to any broker or any other person entitled or claiming to be entitled to the same in connection herewith and the transactions contemplated hereby, and Borrower, by acceptance hereof, agrees to indemnify and to hold Lender harmless from all claims for brokerage fees or commissions (other than claims of a broker with whom Lender has directly contracted in writing) which may be in connection with the transactions contemplated hereby.

Securities offered through US Capital Global Securities, LLC, member FINRA, SIPC.

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Revocation and Termination of Commitment. *(a) Prior to acceptance:* Time and strict performance are of the essence with respect to all the terms, conditions, and provisions of this letter. The Commitment set forth herein may be revoked by Lender at any time prior to its acceptance in accordance with the terms of this Commitment, including, at Lender's sole option, if Borrower fails timely to fulfill all obligations hereunder or if any condition hereunder is not timely met. *(b) Following acceptance:* If Borrower fails to close as required by the terms hereof, or if Lender at any time hereafter in its discretion determines that Borrower will likely be incapable of closing under this Commitment on or before November 30, 2017, for any reason, Lender may so notify Borrower, and Lender's obligations under this Commitment will terminate upon notification.

General Terms. The terms set forth in this Commitment are intended to be indicative of the principal terms of the proposed financing, and this Commitment does not purport to specify all of the terms, conditions, representations and warranties, covenants, and other provisions that will be contained in the final loan documents. This Commitment and the closing of the Proposed Credit Facility will be subject to such other terms, covenants, and conditions as Lender deems appropriate in the exercise of its sole credit judgment. This Commitment supersedes all prior discussions, indications of interest, and proposals (whether oral or written) previously delivered to Borrower, except for the Letter Agreement dated September 30, 2016 and for the Fee Agreement dated December 2, 2016 (the "Fee Agreement") executed by USCP and Borrower, which provides USCP to submit to Borrower a list of investment banking or advisory firms, investors, or sources of capital made known to Borrower by USCP or approached by USCP on behalf of Borrower with whom USCP has had substantive discussion on behalf of Borrower (the "Contact List"); Contact List is attached in Schedule B hereto.

The expiration, termination, or revocation of this Commitment will not terminate, limit, or affect in any way: (a) the terms of the Letter Agreement and Fee Agreement, including the Borrower's obligations to pay for or reimburse Lender for expenses; or (b) any releases of Lender or limitations on the liability of Lender set forth herein. This Commitment may not be modified, amended, or supplemented, except by a document in writing signed by the parties hereto. Borrower may not assign this Commitment.

Commitment Fee. Upon acceptance of this Commitment, Borrower shall pay USCP a commitment fee in the amount of $30,000 (the "Commitment Fee"), which shall include payment for a financial review, on-site visit, legal work, and preparation of documents, and/or closing expenses. USCP shall be entitled to retain this Commitment Fee as part of a break-up fee if Borrower (i) terminates this Commitment; (ii) fails timely to fulfill all obligations under this Commitment; (iii) refuses any funding provided or arranged by Lender; or (iv) consummates a transaction (including a refinancing of Borrower's current credit facility) with an entity other than Lender during the one-year period following the date hereof. Borrower acknowledges and agrees that this break-up fee is intended to compensate USCP for its estimated administrative costs and the amount of damage sustained by USCP as a result of Borrower's inability or unwillingness to close the Proposed Credit Facility.

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USCP Wiring Instructions. Borrower shall pay the Commitment Fee by wire transfer into the following USCP bank account:

Name of beneficiary:	US Capital Partners Inc.
Account number:	[redacted]
SWIFT:	[redacted]
Name of bank:	JPMorgan Chase Bank, N.A.
Address of bank:	101 Montgomery St. San Francisco, CA 94104
Routing number:	[redacted]
Address of beneficiary:	US Capital Partners Inc. 555 Montgomery Street, Suite 1501 San Francisco, CA 94111

Confidentiality. Lender is delivering this Commitment to Borrower with the understanding that Borrower will not disclose the contents hereof or Lender's involvement or interest in providing financing for the proposed transaction to any third party (including, without limitation, any financial institution or intermediary) without Lender's prior written consent, other than to prospective investors, governmental and regulatory authorities, and Borrower's advisors and officers on a need-to-know basis. Borrower agrees to inform all such persons who receive information concerning Lender or this Commitment that such information is confidential and may not be disclosed to any other person. Lender reserves the right to review and approve all materials that Borrower prepares that contain Lender's name or describe Lender's Commitment.

Interpretation. If more than one party is entering into this letter agreement with USCP, any reference to "Borrower" herein in the singular shall be construed as a reference to every party to this Agreement other than USCP, and, unless otherwise indicated, shall be construed to apply to all such parties jointly and severally.

Governing Law. This Commitment shall be governed by the law of the State of California.

Dispute Resolution.

(a) *Dispute.* Any dispute, claim, or controversy arising out of or relating to this Commitment, including the negotiation, breach, validity or performance of the Commitment, the rights and obligations contemplated by the Commitment, any claims of fraud or fraud in the inducement, and any claims related to the scope or applicability of this agreement to arbitrate, shall be resolved at the request of any party to this Commitment through a two-step dispute resolution process administered by JAMS or another judicial and mediation service mutually acceptable to the parties involving first mediation, followed if necessary, by final and binding arbitration administered by a single JAMS arbitrator (the "Arbitrator") in San Francisco, California, pursuant to JAMS Comprehensive Arbitration Rules & Procedures.

(b) *Governing Law and Procedure.* The Arbitrator may grant injunctions and other relief in such disputes. The Arbitrator shall administer and conduct any arbitration in

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accordance with California law, and the Arbitrator shall apply substantive and procedural California law to any dispute or claim, without reference to any conflict-of-law provisions of any jurisdiction. To the extent that the JAMS Rules conflict with California law, California law shall take precedence.

(c) *Final Award.* The Arbitrator shall issue a written award. The award shall be binding and final as between the parties, and a judgment may be entered upon the award in any court of competent jurisdiction. The parties agree that the prevailing party in any arbitration shall be entitled to injunctive relief in any court of competent jurisdiction to enforce the arbitration award. Notwithstanding the confidentiality of the arbitration proceedings as set forth below in paragraph (g), the final award shall not be confidential.

(d) *Costs.* The parties shall each pay an equal share of the costs and expenses of such arbitration and each party shall separately pay for its respective counsel fees and expenses; provided, however, that the Arbitrator shall award attorneys' fees and costs to the prevailing party, except as prohibited by law. If the Arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the Arbitrator may award the prevailing party an appropriate percentage of the costs and expenses incurred by the prevailing party.

(e) *Waiver of Jury Trial.* By entering into this Commitment, each party waives the right to a trial by jury.

(f) *Injunctive Relief.* Notwithstanding the foregoing, this Commitment will not prevent either party from seeking provisional injunctive relief from any court having jurisdiction over the parties and the subject matter of their dispute relating to this Commitment and any agreements incorporated herein by reference.

(g) *Confidentiality.* The parties agree that the arbitration shall be confidential and that no party shall disclose to any person who is not an officer, director, employee or limited partner of a party any document filed at JAMS or exchanged between the parties or testimony presented (or any summaries or quotations thereof) in connection with the arbitration that is designated either on the document or on the testimonial record as "Confidential" (the "Confidential Information"). If, in connection with any judicial proceedings to modify, vacate or confirm any order or award, Confidential Information must be filed with any court, the party submitting such Confidential Information shall file such Confidential Information under seal and shall also file a motion with the court requesting that the Confidential Information remain under seal and no party shall oppose such request. The final award shall not be confidential.

(h) *Class Action Waiver.* Borrower agrees that Borrower will not assert class action or representative action claims against USCP in arbitration or otherwise, nor will Borrower join or serve as a member of a class action or representative action, and Borrower agrees that Borrower will only submit its own, individual claims in arbitration and Borrower will not seek to represent the interests of any other person.

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(i) *Voluntary Nature of Agreement.* Borrower acknowledges that Borrower has read this Commitment carefully and Borrower understands and accepts the obligations which it imposes upon it without reservation. No promises or representations have been made to Borrower to induce Borrower to sign this Commitment. Borrower further acknowledges that Borrower has been given the opportunity to discuss this Commitment with Borrower's private, legal counsel and has taken advantage of that opportunity to the extent Borrower wanted to do so.

Counterparts. This Commitment may be executed in counterparts, each of which will shall be an original, and all of which, when taken together, shall constitute one and the same instrument.

Automatic Expiration of Commitment. This Commitment and all commitments and undertakings of Lender hereunder will expire at 5:00 p.m. (Pacific Standard Time) on November 7, 2017, unless you execute this letter and return it to Lender, together with any additional deposit, if required under Schedule A, prior to such time. Thereafter, all commitments and undertakings of Lender hereunder will expire, without further action by any party hereto, upon the earliest to occur of (a) the closing of the Proposed Credit Facility (at which time the definitive loan documents will reflect the commitments and undertakings of Lender and other parties thereto), (b) November 30, 2017, and (c) the closing of a transaction similar to that contemplated by this Commitment with a lender other than Lender.

We look forward to working with you on this transaction. Please call me at (415) 889-1010 if you have any questions.

Very truly yours,

Charles Towle
Managing Partner
US Capital Partners Inc.

ACCEPTED AND AGREED TO:

By: _____

Name: Thomas Pagano

Title: Managing Member

Date: 11/3/17

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SCHEDULE A

COLUMBIA PACIFIC ADVISORS

November 3, 2017
PERSONAL AND CONFIDENTIAL

TERM SHEET

We are pleased to submit the following Term Sheet ("Term Sheet"). Outlined below are the general terms and conditions under which CPIF Lending, LLC ("Columbia Pacific") is prepared to underwrite and consider funding of the loan ("Loan") described below. This Loan is subject to, among other things, Columbia Pacific's due diligence and underwriting requirements for financing certain real property below as the "Subject Property". Please note that this Term Sheet is not a binding commitment to fund funds. Any commitment, offer, obligation or agreement of Columbia Pacific will only arise upon the signing of a subsequently executed binding commitment letter or formal loan documents signed by an authorized signatory of Columbia Pacific or its affiliate(s). This Term Sheet expires at 5:00pm PST on November 7, 2017 unless it is accepted, countersigned, and returned along with a $30,000 deposit to cover the cost of Columbia Pacific's travel and legal expenses ("Due Diligence Deposit"). As discussed below, the Due Diligence Deposit is refundable, less third party expenses incurred by Columbia Pacific, if the loan is not approved.

SUMMARY OF LOAN TERMS

Loan Amount:	Up to $15,000,000 but not exceed 55% LTV
Borrower:	Front Sight Management, LLC
Lender:	CPIF Lending, LLC, and their respective Successors/Assigns
Subject Property:	Front Sight Firearms Training Institute - 1 Front Sight Rd, Pahrump, NV 89061
Initial Loan Term:	12-Months from the closing date
Interest Rate:	11.0% Fixed, Interest Only
Origination Fee:	4.0% at closing (2.0% to CPA and 2.0% to US Capital Partners)
Yield Maintenance:	The Loan may be prepaid at any time, provided that any prepayment shall be accompanied by interest through the end of the Initial Term.
Exit Fee:	None
Extension Option(s):	One extension option of 12-Months. The option is available if the Borrower has improved upon or maintained the condition of the Subject Property.. The Loan may be prepaid at any time, provided that any prepayment shall be accompanied by interest through the Extension Period.
Extension Fee:	2.00%
Extention Rate:	11.0%
Anticipated Closing:	Lender will make best efforts to close the Loan on or before November 30, 2017. Lender is not able to guaranty any particular closing date. Lender will make best efforts to close expeditiously upon (a) delivery of lender requested due diligence and responses to questions, (b) all closing conditions identified by Lender herein and during its due diligence have been satisfied, and (c) all loan documents required by Lender have been executed and delivered.
Guarantor(s):	Ignatius Piazza, and any member with 10% or greater equity ownership in subject property shall execute a joint and several guaranty. In addition, Borrower and the Guarantor shall be required to execute an environmental indemnity agreement in form and substance satisfactory to Lender. Passive Limited Partners are excluded from the Guaranty.
Recourse:	Full recourse to the Borrower and Guarantor for all principal, interest, and other indebtedness owed to Lender. The guaranty must be (i) enforceable under the state laws, which govern

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	the loan, as evidenced by a legal opinion from Borrower's counsel, and (ii) must otherwise be acceptable to Lender. The Guarantor will remain liable for interest carry, all operating deficits, as well as any and all collection costs.
Security	The Loan shall be secured by the following: - A title insured first lien mortgage on Borrower's fee and/or leasehold interests in the Subject Property and all personal property (tangible and intangible) and fixtures relating to the Subject Property; - 100% Pledge of membership interest in the Borrower & Operator for the Subject Property; - Collateral assignments of all leases, rents, contracts, licenses, management agreements, and all other agreements, relating to the subject Property; and - Other documentation that may be required by Lender.
Other Conditions:	Operating covenant of EBITA 3.5 X CPIF Debt Service
Capital Improvement Compensation:	$5,000,000
Interest Reserve:	None
Holdback for Tax & Insurance:	Lender shall withhold $45,000 from Loan Proceeds to establish a Tax & Insurance Reserve. The Holdback for Tax & Insurance shall be utilized to pay upcoming installments for calendar year 2017, with Impounds, as described below, to commence from the date of Closing so that there are sufficient Impounds in reserve to cover upcoming Tax & Insurance payments. The amounts of the Impounds shall be confirmed during due diligence after prior Tax Bills and Insurance Invoices are verified by Lender to its satisfaction.
Impounds:	Tax and insurance reserves shall be maintained by a monthly deposit by Borrower of one-twelfth (1/12th) of the annual real property taxes and assessments for the Property and one-twelfth (1/12th) of the annual insurance premiums payable for the Property, each as reasonably estimated by Lender (the "Tax and Insurance Reserve"). The estimates shall be determined during Lender's due diligence based off the historical tax bill reviews and insurance quotes from providers/insurers provided by Borrower satisfactory to Lender.
Title and Escrow Services:	Columbia Pacific will retain National Land Tenure, a national title agent, to manage title and escrow services through a national recognized title and escrow company (i.e. First American, Old Republic, Stewart, and Fidelity).
Servicing Fee:	In addition to the Interest Rate specified above, Borrower will pay on a monthly basis a $585/month servicing fee.
Cash Management System:	Borrower shall fully cooperate with Lender in connection with the establishment of a lockbox account, Soft deposit account control agreement ("Soft DACA") and springing Cash Management Agreement ("CMA"), to collect monthly income from the operation of the Facility. During the course of the loan all funds will be available to Borrower at all times. In the event of a default, the "Soft DACA" will convert to a hard DACA and the CMA will begin. Lender will use its best efforts to utilize Borrower's existing deposit bank for the DACA. The CMA language will be incorporated into Lender's loan documents, and if a default occurs, the cash management will be managed by Lender's loan servicer.
Interest Calculation:	Interest will be calculated on the basis of a 360-day year. Monthly payments of interest will be due and payable on the 1st day of each month and considered late if not paid within 3 days of the due date.
Due Diligence Item:	Upon its acceptance of these terms, Borrower will be liable for all of the Lender out-of-pocket third party expenses (including but not limited to travel, site inspection, environmental, property condition report, appraisal, ALTA survey and Legal fees). If the loan closes, any remaining due diligence deposit will be refunded to the Borrower at closing. In the event the project loan application is not approved, any remaining due diligence deposit

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will be returned to the Borrower. If Lender commits to make the loan in accordance with the terms described herein and Borrower fails to accept such commitment, the Due Diligence Deposit shall be "earned" by Lender and become non-refundable.

Exclusivity: Lender will have the exclusive right to the Loan for a period of twenty (20) days. Borrower and its affiliates may not discuss with any other investors or Lenders the Loan discussed herein.

Third Party Reports: By signing below, Borrower hereby authorizes any appraisal firm, environmental firm, or such other third party provider as may be retained by Lender in connection with the proposed loan (collectively, the "Third Party Providers"), to conduct inspections and perform other due diligence on the proposed collateral as Lender may request. Applicant understands and agrees that any and all work product and reports prepared for and delivered to Lender by such Third Party Providers will not be released to Applicant until the earlier of (i) funding of a loan by Lender, or (ii) Lender's denial of the loan request set forth herein.

Reporting Requirements: The following financial reporting will be required:

- Monthly financial statements, rent roll, occupancy reports and bank statements for all properties and entities secured by this loan due within 30 days of month end;
- Monthly written updates on the progress towards sale or refinance, including but not limited to, providing evidence of term sheet and commitment letter from potential take-out lenders; and
- Any additional financial and regulatory reporting items reasonably requested by Lender.

Patriot Act: Lender hereby notifies Borrower and Guarantors, in accordance with the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), that pursuant to the Patriot Act Lender may be required to obtain, verify and record information that identifies Borrower and Guarantors, which information includes the names and addresses of Borrower and Guarantors and other information that will allow Lender to identify Borrower and Guarantors accordance with the Patriot Act.

BORROWER SIGNATURE PAGE TO FOLLOW

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THIS TERM SHEET IS FOR "DISCUSSION PURPOSES ONLY" AND DOES NOT CONSTITUTE A COMMITMENT ON THE PART OF THE LENDER, ITS AFFILIATES, AND/OR ITS ASSIGNS TO MAKE A LOAN. THIS TERM SHEET IS INTENDED TO SERVE AS AN OUTLINE ONLY AND DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, COVENANTS, WARRANTIES, AND OTHER REPRESENTATIONS AND PROVISIONS WHICH WOULD BE STATED IN DEFINITIVE LEGAL DOCUMENTS FOR A QUALIFIED, APPROVED, OR ACCEPTED LOAN TRANSACTION.

AGREED AND ACCEPTED ON:

THIS DAY OF 11/3/17, **2017**

Eastwest Sight Management LLC **(Full Name of Ownership Entity)**

NEVADA **(State of Formation, Entity Type)**

By: _____ **(Signature)**

Ignatius Piazza **(Printed Name)**

Its: Manager / Member **(Title)**

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Exhibit 2

SUMMIT FINANCIAL AND INVESTMENT GROUP, LLC

10421 South Jordan Gateway ◆ Suite 600 ◆ South Jordan ◆ Utah 84095
(801) 944-4320 Office ◆ (801) 944-4322 Fax ◆ Email: sfig@sfig.com
Real Estate Investment Bankers

Friday, August 26, 2016

Dr. Ignatius Piazza
Front Sight Management, LLC.
1 Front Sight Road
Pahrump, NV 89061

Re: **LETTER OF INTENT –** Front Sight Expansion Loan

Dear Dr. Piazza:

Summit Financial and Investment Group, LLC (SFIG) is pleased to issue this Letter of Intent (LOI) **to Front Sight Management, LLC. its Key Principals, Owners and Guarantors hereinafter collectively referred to as "Borrower"** on the terms and conditions set forth in this LOI to finance the property owned by the Borrower, referenced above, together with all of the parking and other appurtenant facilities upon certain land located **in Pahrump, NV** (Subject Property) and all of the personal property both tangible and intangible, now or hereafter, located thereon or used or intended to be used in connection therewith, for which proceeds are advanced on the terms and conditions set forth in this letter. This Letter of Intent is subject to the terms and conditions and general parameters set forth in this letter and the underwriting constraints contained herein.

This Letter of Intent precedes a Commitment for a Loan Secured by Real Estate and guaranteed by the Borrower. Acceptance and execution of this Letter of Intent from SFIG is not a commitment to make the Loan. While SFIG has prepared this Letter of Intent based on information provided by the Borrower, Borrower acknowledges that SFIG and/or its Investor(s) and/or Capital Partner(s), hereinafter "SFIG" will conduct a complete and thorough independent review of the underwriting and any additional information provided by Borrower and, accordingly, determines in its sole discretion; (a) whether it will commit to make the loan and (b) the final loan amount and terms thereof. The general loan parameters are as follows:

This Letter of Intent shall expire at the close of business on FRIDAY, SEPTEMBER 2ND, 2016.

After this date this Letter of Intent shall be of no force or effect and all terms, rates and conditions will be withdrawn.

This is not a binding agreement and execution of this agreement by Borrower does not obligate the same. No Commitment Fee is due with the execution of this Letter of Intent. The Letter of Intent will be binding in conjunction with the acceptance and execution of the Loan Commitment and will then be known as Exhibit "B".

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LOAN PARAMETERS:

The following terms, conditions and structure are to be considered firm based on the information provided to date and on preliminary underwriting review and analysis and are subject to underwriting and financial reviews.

LETTER OF INTENT EXPIRATION DATE:	This Letter of Intent shall expire at the close of business on **FRIDAY, SEPTEMBER 2ND, 2016** and shall be of no force or effect thereafter unless fully executed and received by SFIG; or arrangements have been made with SFIG for a reasonable extension.
SUBJECT PROPERTY NAME:	Front Sight Firearms Training Institute
PROPERTY ADDRESS:	Pahrump, NV
PROPERTY TYPE:	Firearms training facility
OWNERS BORROWERS BORROWER:	Front Sight Management, LLC. and its Key Principals as Owners and Borrowers, hereinafter collectively referred to as "Borrower"; which shall be a single-asset entity controlled by the Key Principals in form and format acceptable to SFIG.
LOAN TYPE:	Construction
LOAN PURPOSE:	To expand the operations of the facility to include time share buildings and expanded range operations.
LOAN AMOUNT:	**$54,500,000 USD** is the estimated loan amount based upon the assumed interest rate and development budget indicated in the Borrower provided materials as of today's date. Loan amount is subject to total Property development and construction budget acceptable to SFIG; and the lesser of the final underwritten maximum Loan-To-Value (LTV), Loan-To-Cost (LTC) or minimum Debt Service Coverage Ratio (DSCR), necessary Loan Interest Reserve, and; subject to the remaining terms and underwriting conditions contained herein. Loan amount may be funded according to a Phasing plan acceptable to SFIG based on costs, absorption; market strength and property type risk.

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Estimated Total Cost Budget	
Current Value of Business	$36,000,000
Vacation Villas	$28,712,500
Patriot Pavillion	$3,975,500
Range Improvement	$1,046,000
Range Expansion	$1,484,220
Infrastructure Improvement	$6,230,910
Interest Reserve	$2,800,000
Contingency	$2,800,000
Loan Fees	$1,500,000
Total	$84,549,130

FUNDING:

Funding will not be approved, submitted, placed or disbursed in any form or portion until such a time as all necessary 3rd party reports and all Commitment Exhibits have been received from Borrower and approved by SFIG, which reports and exhibit documents are required in order to be able to substantiate and support the foundation of the debt placement; which funding shall not occur until final closing of the loan(s).

RATE:

Construction:

An interest rate per annum equal to 375 basis points over the "Base Rate" as herein defined as the Wall Street Journal U.S. Bank Prime Rate (or similar index), floating, interest only, adjusted monthly, paid in arrears, calculated on the daily outstanding balance of the Loan on the basis of a year of 360 days and paid for the actual number of days elapsed. **Today's rate would be 7.25%**

TERM:

Construction:

24 Months

EXTENSIONS:

Construction:

One (1) six month extension

MAXIMUM LTV:
(Loan to Value)

(Subject to Final Underwriting and Financial Reviews)

Construction:

65% maximum allowable.

MAXIMUM LTC:
(Loan to Cost)

(Subject to Final Underwriting and Financial Reviews)

Construction:

65% maximum allowable.

JUNIOR LIENS:

Any secondary junior debt secured by a lien or any security interest on the Subject Property, Collateral or Borrowing Entity either at closing or at any time during the term of the loan without prior approval of SFIG is prohibited.

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GUARANTEES:

Construction:	Required, Corporate and Personal, Full Repayment.
MANAGEMENT AGREEMENT:	During the term of the loan, the Project and Subject Property shall have oversight and management control by the Borrower, or; a Managing/Project Agent acceptable to SFIG pursuant to a Project Management Agreement, which also must be in a form and substance acceptable to SFIG.
UNIT RELEASES:	Equal to 100% of the published sales price plus upgrades minus reasonable sales commissions and closing costs as principal loan reductions.
PRE-SALES:	A minimum of **50%** of the available units for sale must be pre-sold or have firm presale reservations with cash deposits equal to 10% of the purchase price with 3rd party buyers prior to loan funding.
MINIMUM NET WORTH OF BORROWER/SPONSOR:	Borrower shall demonstrate sufficient net worth personally or in aggregate with owned business and/or other owned entities evidencing financial capacity to support and financially manage the Subject Property.
MINIMUM NET LIQUIDITY OF BORROWER/SPONSOR:	Equal to **5%** of the gross loan amount, inclusive of all Guarantors/Borrowers/Sponsors.
MINIMUM NET CASH INVESTMENT REQUIRED:	Equal to **35%** of the hard and soft cost construction budget including any equity credit for acquired and current land values as determined by SFIG. "As Completed" values cannot be used in calculating this ratio. SFIG, in its sole discretion, will reasonably determine Borrower equity which may be comprised of verifiable land equity as determined by an MAI "as is " appraisal ordered by SFIG, and/or; previous cash investment to applicable hard and soft cost budget categories, and/or; remaining cash equity to be invested into the project for use in the Loan Budget which cash equity must be present and remain in full into a single account and available for verification by SFIG before final submission for approval, commitment and closing. Available cash equity will not be a condition of any commitment.
EQUITY REQUIREMENT:	The Final Loan amount shall not exceed the Loan to Value (LTV) as outlined in this document and as determined by a currently dated MAI Full Narrative Self-Contained Appraisal engaged by and approved by SFIG, or; the total LTC (Loan to Cost), as outlined in this document - whichever is less between LTV or LTC. At SFIG's option,

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such equity may be satisfied, partial or in full, by Borrower's documentation of cash equity in the project and/or such equity may be based on an appraisal that shall be satisfactory in the sole discretion of SFIG. Prior to SFIG final submission for project approval, Borrower will provide evidence satisfactory to SFIG that the Borrower has contributed the difference between the acquisition costs of the Subject Property and the loan amount in cash deposited into an account which can be verified by SFIG and which shall remain in that same account until and thru closing of the loan.

PREPAYMENT:

Construction Loan: The loan may be prepaid, in whole or in part, at any time prior to the Maturity Date without penalty or premium.

APPROVAL OF ENTITY:

The form, structure and capitalization of the Titled Owner and Borrower must be satisfactory to SFIG.

SECURITY:

In summary, security for the Loan shall consist of one or more of the following:

(i) First Mortgage/First Deed of Trust/Promissory Note to the real estate located **in Pahrump, NV consistent with and disclosed in the Borrower's Financing Package dated and received on or before June 21st, 2016** (ii) a first priority collateral assignment of all consultant contracts, leases, rents, reserves and profits from the Subject Property and or operation of the Subject Property (iii) a perfected first security interest under the Uniform Commercial Code on all of the furniture, fixtures and equipment now or hereafter installed in, affixed to, placed upon or used in connection with the Subject Property other than that owned by tenants (iv) a consent, subordination and recognition agreement, and any other contracts relating to the operation of the Subject Property, and the collateral assignment of any leases, permits, approvals and warranties applicable to the Subject Property or that have signed leases to occupy space in the Project following completion of construction (v) an environmental indemnity agreement indemnifying SFIG against all claims and causes of action based on the presence, use or release of any hazardous substances on or affecting the Subject Property (vi) such other security interests and instruments relating to the Subject Property as SFIG and its counsel may reasonably require in order to evidence or perfect the liens intended to be granted pursuant to the Loan Documents, including but not limited to customary closing certificates and other agreements.

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LOAN FEES: A "Loan Fee" relating to the loan shall be paid to SFIG as follows:

Construction: A fee of One (1%) Percent of the gross Loan amount shall be paid by the Borrower to SFIG at the closing of the Construction Loan.

Loan Fees shall be deemed earned at time SFIG delivers to Borrower, loan commitments acceptable to Borrower, and paid upon initial funding of any portion of loan proceeds. In the event SFIG and Borrower by mutual consent either orally or in writing forego a formal written commitment and proceed with preparation of actual Loan documents, advance deposits, letters of intent, or other such actions precedent to closing or obtaining Loan funds in accordance with the Commitment, then such actions will constitute a commitment as referred to in the Commitment.

COOPERATING BROKER(S): Tuttle & Company

Borrower acknowledges and agrees that a fee of (and not to exceed) 1% of the Loan amount is payable by the Borrower to the above-identified "Cooperating Broker" at closing of the Loan. Such fees **are not** included in the Loan Fee(s) to be paid to SFIG. Borrower hereby acknowledges and agrees that SFIG is not required to compensate the above-identified Cooperating Broker or otherwise collect a fee on behalf of such Cooperating Broker.

All brokers, agents and third party intermediaries are strictly independent, and are not authorized to represent SFIG as a company, nor make any statements of intent, policy, claims or promises on behalf of the company or any of its executives or staff. SFIG shall not be bound or obligated by, and no person shall take action in reliance upon, statements of any such independent third parties. Brokers represent their own clients to SFIG, and do not "represent" SFIG to any potential or current clients. All third party contracts and claims purporting to provide or include SFIG services, in whole or in part are willfully and knowingly fraudulent misrepresentations. Any retainers requested or received by or paid to any third parties are not received by SFIG, do not create a client relationship and do not cause the provisioning of or change in any SFIG services. All SFIG services are provided strictly in the context of a direct and contractual Financial Institution relationship.

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AUTHORIZATION FOR LOAN FEES:

Borrower/Titled Owner will irrevocably authorize SFIG to include the above Loan Fees as a part of the closing statement and pay SFIG, the Cooperating Broker, and/or their assigns, directly from Loan or funding proceeds the sum(s) as disclosed and directed on the closing statement. However, if any such Loan is funded without disbursing the applicable fees to SFIG, then Borrower shall be liable for payment of such fees to SFIG. In the event that Borrower accepts any loan terms, loan proceeds from any Investor(s) and/or Capital Partner(s) associated with Borrower by SFIG for any portion of the Subject Property or Project or any other phase thereof, regardless of whether the loan terms or type of financing accepted are different from those outlined herein or otherwise involve any other type of financing, the obligations of Borrower to pay SFIG the fees set forth herein shall remain in full force and effect, and all fees payable hereunder shall be deemed earned by SFIG upon acceptance of such loan terms or financing by Borrower.

COMMITMENT FEES:

A **$125,000** U.S.D. Conditional Commitment Fee shall be payable to SFIG at the execution of the Conditional Loan Commitment by Borrower and shall be credited against Loan Fees payable to SFIG at Loan Closing.

These monies shall be used solely for the purpose of the Conditional Loan Commitment request, inclusive of SFIG out of pocket costs for site visits, travel, lodging, car rental, internal underwriting and processing charges including overnight mail services, underwriting resources and personnel, etc., and are not allocated for third party report engagements.

In the event that the Borrower complies and qualifies with all of the underwriting requirements contained in the LOI and in the Loan Commitment, including the delivery of all the items, documents and conditions listed on the Exhibits "A" and "B" of the Commitment (collectively the "Exhibits") and any other documents or underwriting requirements that may be reasonably requested and necessary including resolution of any reasonable underwriting issues that may arise, at the discretion of SFIG, and are provided to SFIG in a "Timely Manner" and then if SFIG is unable to complete funding as stated herein, the Commitment Fee will be refundable within thirty (30) business days of receipt of written Termination of the Commitment minus any out-of-pocket costs. The Commitment Fee will be forfeited if one or more of the following occur:

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(i) The Borrower does not comply with or meet the above conditions and those conditions set forth in the LOI and in the Loan Commitment and in the Exhibits;

(ii) The Borrower accepts or initiates financing for the Subject Property from any third party during the term of the Loan Commitment;

(iii) Borrower terminates the Loan Commitment for any reason prior to the delivery of all required and subsequently requested Exhibit items and all required Exhibits;

(iv) The Borrower loses ownership or control of the Subject Property through the action of law or for any other reason or act;

(v) If at any time during underwriting and financial review SFIG shall determine that any of said material or information is in error or constitutes a misrepresentation or fraud, and such error, misrepresentation or fraud materially affects the ability of SFIG to provide the financing requested by Borrower and contained in the Letter of Intent or Loan Commitment;

(vi) If the Market and/or Property Type where the Subject Property is located experiences significant and material market changes that affect the ability to fund within the prescribed guidelines in the LOI and Loan Commitment;

(vii) If the Market and/or Property Type where the Subject Property is located experiences significant and material changes that affect the ability to fund as originally intended and the Borrower is not willing or able to accept revised loan structure(s), providing SFIG is able to offer revised terms;

(viii) If Borrower is not timely (Timely Manner) in the delivery of required Exhibit documents, defined as received in SFIG offices within **120 calendar days** from execution of Commitment, exclusive of any open 3rd party reports, as determined by SFIG.

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SITE VISITS:

Borrower agrees to make arrangements for the inspection(s) of the Subject Property as well as provide access to any Subject Property records that SFIG or its representatives deem reasonable or necessary both on site at Subject Property and at Borrowers' offices or place of business.

COSTS AND EXPENSES:

Borrower shall pay all additional costs and expenses incurred in connection with a Commitment and the preparation for and the closing of the Loan, whether the Loan is closed or not, including appraisal fees, market and feasibility studies, engineering examination fees, environmental audit fees, inspection fees, surveyor's fees, legal fees (including fees of legal counsel of Lender), lender loan fees and all out-of-pocket expenses related to the Loan. SFIG shall not bear any out-of-pocket expenses whatsoever in connection with a Commitment or any costs incurred by the Loan.

TIMING TO CLOSE:

Estimated at approximately **30-90** business days for closing after receipt of executed Loan Commitment and after receipt of all required Loan Exhibit documents for underwriting.

Final underwriting for approval of Loan Request will not be submitted, approved or completed by SFIG until all documents as required by the Exhibits, or subsequent Exhibit document(s) reasonably requested by SFIG, are received, reviewed and accepted by SFIG; or as determined by SFIG in its sole discretion.

REPORTS:

Approvals of the loan shall be conditioned upon satisfactory completion of the following in accordance with SFIG specifications and requirements:

General

M.A.I. Self Contained Full Narrative Appraisal
(Current within previous 6 months)
Engineering Report
Environmental Report, Phase I or Phase II if necessary
Independent 3rd party Market and Feasibility Study
Site Inspection Report (SFIG to complete)
Credit Reports
Insurance Coverage Review Report
Loan Commitment Exhibits

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Construction Only

Required Permits and Approvals
Final Construction Budget
Architect Contract
Contractors Construction Contract.
All Consultants Contracts
ALTA Property Survey
Soils/Geological Study Report

Wherever possible, SFIG will attempt to use any existing and current third party report, subject to SFIG approval, current updates and letter of conveyance.

All 3rd party Reports, unless previously agreed to or accepted by SFIG, must be engaged and managed by SFIG within the appropriate timetable. If new reports are required Borrower cannot engage the report and if engaged Borrower does so at their own risk.

RIGHT TO RELY:

Borrower further understands and acknowledges that SFIG will rely on material and representations made by Borrower prior to the issuance of the Commitment and will rely on future material or information given or otherwise received by SFIG from Borrower or Borrower's Representative, Agent or Broker(s). Borrower agrees and acknowledges that all exhibits items are required and that no exhibit document or item as listed on the Exhibit at start of underwriting or subsequently added thereafter by SFIG for cause shall be waived, eliminated or determined to not be required except with the express written agreement of the same waiver by the Principal of Summit Financial and Investment Group, LLC. Borrower further agrees that if, at any time, SFIG shall determine that any of said material or information is in error or constitutes a misrepresentation, and such error or misrepresentation may materially affect the ability of SFIG to provide the financing requested by Borrower SFIG may, in its sole discretion, terminate the Commitment or modify its terms and conditions; or if Borrower is not timely (Timely Manner) in the delivery of required Exhibit documents, defined as received in SFIG offices within **120 calendar days** from execution of Commitment, the Commitment Fee will become non-refundable.

ASSIGNMENT:

The Loan may not be assigned without prior written consent and approval by SFIG and payment of a 1% transfer fee plus all costs, fees and expenses incurred by Borrower or Assignee Borrower (including attorneys fees) in connection with such transfer, except that such consent

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and fee shall not be required in the case of transfers by reason of death or operation of law. The assignee shall assume and agree to pay the indebtedness evidenced and secured by the Loan Documents (subject to a recourse provision contained therein) pursuant to documents reasonably required by SFIG.

Borrower may not assign their rights under this Letter of Intent or the Loan Commitment to other persons or legal entities without the prior written consent of SFIG and its Principals.

CONSTRUCTION START:

In the event the Borrower has started construction or intends to start construction on the Subject Property and expend its funds prior to loan approval and funding by SFIG the Borrower does so at its own risk. And all costs, payments, payables, liens or encumbrances or expenses incurred as a result of any delay of funding are the sole responsibility of the Borrower until such a time as SFIG approves, closes and funds the Loan based on the SFIG approved Budget. SFIG is not responsible or liable for any delays or expenses in providing financing occasioned by SFIG decisions not to make or fund the requested Loan/Investment.

UNDERWRITING REQUIREMENTS:

A Loan Commitment shall be conditioned upon satisfactory completion of the underwriting of the Loan Commitment Exhibits and completion and satisfactory review of the following:

(a) an M.A.I. Appraisal Report, Engineering Report, Environmental Report, 3rd party Feasibility Report and credit reports as set forth previously; and,

(b) acceptable validated operating statements (P&L's or Income Statements) for the Subject Property for the most recent prior three year period and current year to date and proforma operating budget for the first five years covering the proposed Loan period, and acceptable Borrower financial statements including concurrently dated Income Statement(s) and Balance Sheet(s) within the most recent sixty (60) day period; ***all of which information Borrower agrees will be required and provided to SFIG on an ongoing monthly and availability basis and shall be provided by the Borrower routinely without prompting or demand by SFIG (If applicable to Subject Property).***

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(c) inspections of the Subject Property by SFIG; and,

(d) final determination that the underwritten proforma and/or annual net income operating income of the Subject Property, based in part on the financial statements set forth in (b) above is acceptable to SFIG; and,

(e) no subordinate debt will be allowed without SFIG express written consent; and,

(f) receipt and satisfactory review of all exhibits for Loan processing specified in Exhibit "A" attached to the SFIG Loan Commitment, and such other related documents with regard to the Subject Property and the Borrower as SFIG may request in writing (A copy of Exhibit "A" to the Loan Commitment and the Borrower Credit Authorization and Certification Form shall be attached to the Loan Commitment). ***all of which information Borrower agrees will be required and provided to SFIG on an ongoing monthly and availability basis and shall be provided by the Borrower routinely without prompting or demand by SFIG.***

(g) all Exhibits and documents which are part of any Exhibit shall be provided to SFIG on a timely basis. Exhibit documents may be provided by facsimile, email, courier, postal or hand delivery. ***In the event any document is provided by facsimile or email to SFIG such document must also be provided in hard copy form in the highest quality available to Borrower, unless otherwise waived by SFIG. And such documents, even though may be used for underwriting purposes, shall not constitute full delivery and acceptance until hard copy of the same documents are received by SFIG either by courier, postal or hand delivery and in acceptable quality and condition. No final submission for any funding approval or consideration for credit approval shall be submitted by SFIG until such documentation has been received in acceptable format and quality.***

(h) SFIG reserves its rights to any syndication of this loan and or its Loan Commitment or funding of the Commitment.

ESCROWS FOR INTEREST RESERVE, TAXES, INSURANCE:

At the closing of the Loan, as a condition to disbursement of Loan proceeds to the Borrower, an escrow may be required from Loan proceeds one or more of the following:

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(a) a loan in process debt service reserve account for debt service of the loan during the term of the Loan; and,

(b) amounts to pay currently due property taxes, other assessments and insurance premiums; and,

(c) appropriate reserves for scheduled or proposed future tenant improvements and leasing commissions and reserve to maintain future minimum Debt Service Coverage Ratio requirements.

LOAN FEASIBILITY AND REPAYMENT:

The Borrower acknowledges that the intent of the loan is to be repaid according to the terms and conditions contained in the LOI and Conditional Commitment. Prior to final loan commitment SFIG will determine the feasibility of the project and the likelihood of the loan being repaid as a part of the underwriting process. If it is determined, by SFIG, that the project or loan is not feasible, which is to say it is unlikely that repayment will occur according to the terms and conditions in the LOI and Conditional Commitment, then SFIG retains the right to modify the loan terms in order to achieve feasibility. If modified loan terms cannot increase the feasibility of the loan or project SFIG retains the right to deny the loan. The Borrower acknowledges that if the aforementioned events occur or if any of the following events occur the loan may be denied and the Commitment Fee forfeit including but not limited to:

(i) In the event of Subject Property acquisition, the purchase price exceeds the "As is," value as determined by third party independent MAI appraisal and/or the Subject Property is unable to meet debt service requirements per the terms and conditions of the LOI and Conditional Commitment.

(ii) Regarding construction of the Subject Property, the total costs exceed the "as complete" value as determined by third party independent MAI appraisal and market feasibility report and/or the stabilized value as defined in the appraisal after Subject Property completion.

(iii) Concerning existing properties, the Subject Property's historical and current trends in net operating income cannot support the debt service obligations contained in the LOI and Conditional Commitment and/or does not yield a value based upon capitalization rates, as determined by an

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independent third party MAI appraisal, which is sufficient per the terms and conditions of the LOI and Conditional Commitment.

(iv) Relating to non-performing or under-performing properties, the Subject Property cannot obtain a sufficient value and/or NOI including any renovations or repositioning of the property as determined by an independent third party MAI appraisal and market feasibility report.

CLOSING REQUIREMENTS: Closing and funding of the Loan will occur only upon the delivery to and approval by SFIG and our Legal Counsel of the following matters:

(a) title insurance and survey prepared in accordance with SFIG specifications; and,

(b) evidence of payment of all municipal charges and assessments, including real estate taxes, any outstanding liens; and,

(c) organizational documents and certificates of qualification of Borrower and, if applicable, the general partner of the Borrower; and,

(d) evidence of compliance with all laws, ordinances, rules and regulations applicable to the Subject Property, including zoning, building, environmental and land use matters; and,

(e) abatement, operations maintenance and/or repairs programs to be undertaken with respect to the matters set forth in the engineering and environmental reports; and,

(f) casualty, owner's risk, liability, rent/income interruption, flood (if applicable), worker's compensation, and earthquake insurance (if applicable) prepared in accordance with SFIG's specifications.

(g) Borrower acknowledges and agrees that; (a) SFIG shall be entitled to rely upon the information, materials, and representations provided or made by Borrower prior to execution of the Commitment, and (b) SFIG shall be entitled to rely upon all information, materials and representations provided or made by Borrower following execution of the Commitment in connection with this LOI. Borrower further agrees that if, at any time, SFIG determines that any of said materials, information or representations are in error or are false or do not support

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the funding requirements of this LOI and the Commitment, and such error, misrepresentations or information may materially affect the ability of SFIG to provide the financing requested by Borrower, SFIG may, in its sole discretion, terminate the Commitment.

LOAN DOCUMENTS:

The loan shall be evidenced, governed and secured by SFIG standard loan documents, which may be modified by the SFIG or its counsel or assigns to the extent necessary to reflect (i) laws and practices customary in the state where the Subject Property is located and (ii) special facts and circumstances as determined by SFIG. After the closing date, the terms of the Loan Documents shall supersede the terms of this Letter of Intent and the Loan Commitment.

UNDERWRITING DOCUMENTS:

All documents received in the process of underwriting shall remain in the possession of SFIG and is considered SFIG work product.

MODIFICATION OR TERMINATION:

Notwithstanding the issuance of a Letter of Commitment, SFIG may modify the amount or terms of Loan or may elect to terminate the commitment, at its option in the event that:

(a) Borrower fails to complete the underwriting requirements set forth above and in the Commitment; and,

(b) the reports, financial statements and analyses, and other underwriting requirements to be submitted by Borrower in accordance with underwriting requirements set forth above do not fully support the assumptions on which this Letter of Intent, an Commitment or a Letter of Commitment is based; and,

(c) there is any material inaccuracy or there occurs any material adverse change in any information, adverse current market conditions that directly affect the Subject Property, representations or materials submitted or in support of the Commitment for the Loan, including any information, representations or materials reflecting the financial condition or the net operating income, future or present, of the Subject Property, Borrower, any general partner thereof or any Guarantor, or the default by any such party under any material obligation to any third party; and,

(d) there shall occur any transfers of interests in the Borrower or the Subject Property; and;

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(e) the Subject Property suffers material damage, waste or destruction; and,

(f) there shall be commenced or threatened against the Subject Property any eminent domain or taking proceeding; and,

(g) there occurs any event or circumstance which has a material adverse impact on the Borrower or the Subject Property or its value, including, without limitation, any material proceedings or actions pending or threatened against or adversely affecting the Borrower or the Subject Property; or,

(h) Borrower shall fail to satisfy the requirements of a Letter of Commitment in a Timely Manner; or,

(i) in the event that the Borrower or any general partner or key sponsor thereof shall become insolvent or make a general assignment for the benefit of creditors.

INVESTIGATION AND INQUIRIES:

The undersigned hereby authorizes SFIG to conduct such investigations and inquiries as to its credit, operations, the Subject Property, the Borrower and/or its Principals, affiliates and the collateral as well as all necessary inquiries with any governing municipality or agency as to the current condition of, but not limited to the Subject Property's zoning, entitlements, approvals and permits as shall be necessary or desirable in connection with the Loan and monitoring of the Loan, if made including but not limited to credit references, credit reports or background checks. By this authorization, persons of whom SFIG may make such inquiry are empowered by the undersigned to cooperate with and supply all requested information to SFIG

CONFIDENTIALITY:

SFIG and Borrower/Applicant (Applicant) agree not to disclose any Confidential Information at any time with any third party, entity or business not directly related to this transaction and the Subject Property other than as provided for as follows:

It is acknowledged by SFIG and the Applicant that the Confidential Information to be furnished is in all respects confidential in nature, and that any disclosure or use of the same by either SFIG or Applicant, except as provided in the Letter of Intent (LOI) or Conditional Commitment, may cause serious harm or damage to its owners and officers. Therefore, SFIG, the Applicant, their officers, agents, and

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assigns agree that both SFIG and Applicant will not use the Confidential Information furnished and mutually exchanged for any purpose other than as stated in the LOI and Conditional Commitment, and agree that the Receiving Party, SFIG or Applicant, will not either directly or indirectly by agent, employee, assigns or representative, disclose this Information, either in whole or in part, to any third party; provided, however that (a) the Information furnished may be disclosed only to those directors, officers and employees of the Receiving Party and to the Receiving Party's advisors or their representatives who need such Information for the purpose of evaluating any possible transaction (it being understood that those directors, officers, employees, advisors and representatives shall be informed by the Receiving Party of the confidential nature of such information and shall be directed by the Receiving Party to treat such Information confidentially), and (b) any disclosure of the information may be made to which Disclosing Party consents in writing.

MISCELLANEOUS:

SFIG shall be under no obligation to make a loan unless all of the requirements of this LOI or the Commitment have been fully satisfied. **Time is of the essence with respect to all dates, periods of time and expressions of interest set forth in this Letter of Intent.**

Issuance of this Letter of Intent is not a commitment to make or close a loan and it is not a certification or final acceptance of the materials and documents provided by the Borrower and available to SFIG at the issuance of this Letter of Intent or the Commitment. Any final loan submission and/or Loan Commitment will be subject to the receipt and acceptance by SFIG of all of the requisite documents required in the Commitment and its Exhibits or additional documentation as reasonably required of the Borrower during underwriting and financial review.

(Please be advised that incoming phone calls to SFIG may be recorded or monitored for quality assurance and accuracy.)

ENTIRE AGREEMENT:

This Letter of Intent (LOI) and any Conditional Commitment to be issued, Exhibits A, B or C (and any documents referred to in them) contains the whole agreement between the Parties relating to the transactions contemplated by this transaction and supersedes all previous understandings and agreements between the Parties relating to the agreements. Each Party acknowledges that, in agreeing to enter into this Letter of Intent Agreement, it has not relied on any representation,

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warranty, collateral contract or other assurance (except those set out in this Agreement and any documents referred to in it) made by or on behalf of any other Party or any other person whatsoever before the execution of this Agreement. Each Party waives all rights and remedies which, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance, provided that nothing in this Clause shall limit or exclude any liability for wilful misconduct or fraud.

EXPIRATION:

This Letter of Intent shall expire on FRIDAY, SEPTEMBER 2ND, 2016.

After this date this Letter of Intent shall be of no force or effect and all terms, rates and conditions will be withdrawn.

If this Letter of Intent explaining the currently available terms and conditions of the proposed loan are acceptable - SFIG is prepared to issue a Loan Commitment and proceed forward with the underwriting process for this project. Please acknowledge your understanding of the above terms by executed this Letter of Intent below. If this is not acceptable or if it is believed that needed modifications are required or suggested to this Letter of Intent please call us directly to discuss possible changes and/or to see if a short extension has merit in the interim.

DO NOT SIGN THIS AGREEMENT IF YOU ARE NOT IN FULL ACCORDANCE WITH ITS TERMS AND CONDITIONS.

I/We understand and accept the stated parameters, terms and condition of the Letter of Intent and by signature authorize SFIG to issue a Loan Commitment with the required Exhibits.

(PRINT or WRITE LEGIBLY)

Company/Borrower: First Sight Management, LLC

Borrower/Contact: Dr Evstidis Plazas

Title: Managing Member

Address: PO Box 1790

City, State, Zip: Windsor, CA 95492

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Office Phone: 931 375 1679

Fax: 707 837 0714

Cell Phone: [redacted] 707 837-0603

Email: Ignatius@frontsight.com

Signature:

Date Signed: 9/2/16

If there questions or comments, we are interested in hearing from you directly. Or, if you wish, you are welcome to visit our office in person to discuss the financing.

We do look forward to working with you on this financing.

Sincerely,

Ben Powell
Loan Officer

For and in behalf of:

Summit Financial and Investment Group, LLC
10421 South Jordan Gateway
Suite 600
South Jordan, Utah 84095
Office: (801) 944-4320
Fax: (801) 944-4322
sfig@sfig.com

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