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

<p>11 In re: 12 Front Sight Management LLC, 13 14 Debtor.</p>	<p>Case No. 22-11824-abl Chapter 11 Hearing Date: April 13, 2023 Hearing Time: 9:30 a.m.</p>
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17 **LIQUIDATING TRUSTEE’S REPLY TO MICHAEL DESLAURIERS’ RESPONSES**
 18 **TO THE NINTH OMNIBUS OBJECTION (1) REDUCING AND ALLOWING**
 19 **CERTAIN MEMBER CLAIMS AND (2) DISALLOWING AND**
 20 **EXPUNGING CERTAIN OTHER MEMBER CLAIMS**

21 Province, LLC, solely in its capacity as the duly authorized and acting Liquidating Trustee
 (the “Liquidating Trustee”) of the Front Sight Creditors Trust (the “Trust”), hereby submits its reply
 22 (the “Reply”) to the responses [ECF Nos. 784, 789 and 796] (collectively, the “Responses”) filed by
 23 Michel Deslauriers (“Claimant”) to the Liquidating Trustee’s *Ninth Omnibus Objection (1) Reducing*
 24 *and Allowing Certain Member Claims and (2) Disallowing and expunging Certain Other Member*
 25 *Claims* [ECF No. 695] (the “Objection”).¹ In support of the Reply, the Liquidating Trustee
 26 respectfully represents as follows:

27 _____
 28 ¹ Pursuant to Front Sight Management LLC’s (the “Debtor”) confirmed chapter 11 plan of reorganization and order thereon, the Liquidating Trustee has standing to pursue all claim objections of general unsecured creditors in this case.

1 **I. INTRODUCTION**

2 Claimant filed Proof of Claim 82-1 (“Claim 82”) in the amount of a \$4,410.00 general
3 unsecured claim. As stated in the Objection, the Debtor’s books and records reflect that Claimant
4 paid \$2,891.00 for his membership and membership upgrades. However, Claimant was banned by
5 the Debtor, his membership was terminated and he was refunded the full amount he paid to the
6 Debtor pre-petition (even though there was no requirement that the Debtor refund a banned
7 member). Attached to the concurrently filed declaration of Susan K. Seflin as **Exhibit 2** is a true and
8 correct copy of the check stub issued on April 14, 2022 evidencing the Debtor’s full refund to
9 Claimant for his membership payments.

10 Claimant has failed to provide this Court with any evidence that he paid more than \$2,891.00
11 for his memberships and membership upgrade/rewards, or that he had any agreement with the
12 Debtor that entitled him to a refund if he was banned. In fact, Claim 82 actually supports the
13 Objection and the amount reflected in the Debtor’s books and records. Specifically, Claim 82
14 includes an email allegedly from Dr. Piazza, the Debtor’s principal pre-petition, stating that
15 Claimant had paid \$2,891.00 towards his membership. Although Claimant attached additional
16 emails to the Responses, none of the emails are supported by an affidavit or declaration
17 authenticating the documents as required by Local Rule 9014(c) and, therefore, are not admissible as
18 evidence. Similarly, Claimant has not submitted a declaration under penalty of perjury testifying
19 that he did not receive the refund check issued by the Debtor.

20 Simply put, the Liquidating Trustee has presented facts tending to defeat Claim 82 by
21 probative force at least equal to the allegations in Claim 82. *See Wright v. Holm (In re Holm)*, 931
22 F.2d 620, 623 (9th Cir. 1991). Accordingly, the burden shifts back to Claimant to prove the validity
23 of Claim 82 by a preponderance of evidence. *Id.* Claimant has failed to meet this burden.

24 **II. CLAIMANT IS NOT ENTITLED TO ANY CLAIM AGAINST THE ESTATE AS HE**
25 **WAS PERMANENTLY BANNED BY THE DEBTOR, HIS MEMBERSHIP WAS**
26 **TERMINATED PRE-PETITION AND HE WAS REFUNDED**

27 Claimant only paid \$2,891.00 for all memberships and membership upgrades/rewards, which
28 amount was refunded to Claimant pre-petition. Claimant has not been damaged in the amount of

1 \$4,410.00 (which is the amount asserted in Claim 82). In fact, Claimant has not been damaged at all
2 as he received a full refund pre-petition. Assuming, *arguendo*, Claimant did not receive a full
3 refund, Claimant's own actions caused him to be banned permanently and for his membership to be
4 terminated, and there was no contract or other provision pre-petition that required the Debtor to
5 refund members that were banned and whose memberships were terminated.

6 However, to the extent the Court determines that Claimant is allowed to any claim against the
7 estate, such claim should be limited to the amount paid by Claimant to the Debtor. Bankruptcy
8 courts routinely find that rejection damages from termination of memberships are based on what the
9 respective claimants paid for their memberships. *See In re Nittany Enterprises, Inc.*, 502 B.R. 447,
10 456-7 (Bankr. W.D. Va. 2012) (allowing a general unsecured claim only as to a pro-rated amount of
11 the membership purchase price); *In re Palmas del Mar Country Club, Inc.*, 443 B.R. 569 (Bankr. D.
12 P.R. 2010) (disallowing priority claims filed by the country club's members for refund of the
13 membership deposit and allowing the claims as general unsecured claims in the amount of the
14 membership deposit); *In re Yellowstone Mountain Club, LLC*, 469 Fed. Appx. 584 (9th Cir. 2012)
15 (holding that claimant's allegations for damages above and beyond his \$250,000 membership
16 deposit were speculative and not provided for under the membership agreement).

17 For example, *In re Four Star Financial Services, LLC* ("*Four Star*"), 469 B.R. 30 (C.D. Cal.
18 2012), the claimant paid an initiation fee to purchase a transferable lifetime membership which
19 entitled the member to use various campgrounds for life. On average, the initiation fee was \$4,500
20 plus annual dues. *Id.* at 31. The claimant argued he was entitled to a priority claim and that "he
21 contracted for a transferable, lifetime membership, and the services that go with it, and at the time of
22 the bankruptcy he had not yet received all these services." *Id.* at 33. In *Four Star*, the district court
23 noted that "the initiation fee paid here by Appellee entitled him to immediate use of the campground
24 network. With the payment of the initiation fee, Appellee was immediately a member. He was not
25 waiting for services to be rendered by TAI. Somewhat illogically, Appellee points to his lifetime
26 membership and transferability as evidence of undelivered services. Assuming this were true,
27 Appellee's bargained-for services would not be delivered for several generations. While not
28 discounting the premium placed on the longevity and transferability of the memberships, the Court

1 finds these benefits inherent in the membership Appellee received immediately, rather than
2 something incapable of delivery for several generations ... Appellee paid an initiation fee and was
3 immediately entitled to avail himself of the entire campground network. Appellee contracted with
4 his eyes wide open, and while he might not have foreseen the financial trouble of TAI, this was a
5 risk he took in signing up to be a member of the campground network.” *Id.* at 35. The district court
6 ultimately found that “the initiation fee entitled Appellee to the immediate use of the facilities. The
7 initiation fee was not paid for the future guarantee of services and monthly dues were required in
8 order to continue utilizing the campground network ... In neither case was the initiation fee offered
9 as security for the future provision of services; it was merely the price of admission. Thus, the
10 initiation fee was not a deposit and the bankruptcy court erred by giving Appellee’s Claim
11 priority...” *Id.* While the claimant was not seeking a claim more than what he had paid, the analysis
12 done by the district court is helpful in this matter as Claimant received his membership when
13 purchased and he took the risk when signing up with the Debtor that it may have unforeseen
14 financial trouble.

15 The ultimate burden of persuasion with respect to an objection to claim is always on the
16 claimant. *Holm*, 931 F.2d at 623. Claimant has failed to meet this burden. Claimant has failed to
17 produce any admissible evidence supporting the amount of Claim 82 or controverting the
18 Liquidating Trustee’s evidence in the Objection. Accordingly, Claim 82 should be disallowed in its
19 entirety. To the extent the Court allows Claim 82 in any amount, Claim 82 is clearly excessive. The
20 request to reduce Claim 82 to the amount paid by Claimant is supported by case law, and the
21 Objection should be sustained.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Liquidating Trustee respectfully requests that the Court sustain
3 the Objection in its entirety, including as it relates to Claim 82.

4 DATED: April 6, 2023

BG Law LLP

6 By: /s/ Susan K. Seflin

Susan K. Seflin

Jessica S. Wellington

7 Attorneys for Province, LLC, solely in its capacity as
8 the Liquidating Trustee of the Front Sight Creditors
9 Trust

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CERTIFICATE OF SERVICE

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

On April 6, 2023, I served the following document:

LIQUIDATING TRUSTEE’S REPLY TO MICHAEL DESLAURIERS’ RESPONSES TO THE NINTH OMNIBUS OBJECTION (1) REDUCING AND ALLOWING CERTAIN MEMBER CLAIMS AND (2) DISALLOWING AND EXPUNGING CERTAIN OTHER MEMBER CLAIMS

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

(1) The Court’s CM/ECF List:

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(2) VIA U.S. FIRST CLASS MAIL:

1 Claimant:
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4 Canada H3M 2R6

(3) VIA E-Mail:

5 Michael Deslauriers – deslauriermc@me.com
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7 I declare that I am employed in the office of a member of the bar of this Court at whose
8 direction the service was made. I declare under penalty of perjury under the laws of the United States
9 of America and the State of California that the foregoing is true and correct.

Executed **April 6, 2023**, at Woodland Hills, California.

10 /s/ Jessica Studley
11 JESSICA STUDLEY
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