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

<p>11 In re: 12 13 Front Sight Management LLC, 14 15 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 THE RESPONSE FILED BY CLAIMANT**
 18 **PETER PASSARETTI TO THE NINTH OMNIBUS OBJECTION (1) REDUCING**
 19 **AND ALLOWING 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 response [ECF No. 746] (the “Response”) filed by claimant Peter Passaretti
 23 (“Claimant”) to Liquidating Trustee’s *Ninth Omnibus Objection (1) Reducing and Allowing Certain*
 24 *Member Claims and (2) Disallowing and expunging Certain Other Member Claims* [ECF No. 695]
 25 (the “Objection”).¹ In support of the Reply, the Liquidating Trustee respectfully represents as
 26 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 64-1 (“Claim 64”) in the amount of a \$3,444.00 general
3 unsecured claim. Claim 64 is a face page claim without any evidence supporting the amount of the
4 claim. Similarly, the Response does not include any evidence supporting the amount of Claim 64.
5 As stated in the Objection, the Debtor’s books and records reflect that Claimant paid \$2,144.00 for
6 his membership and membership upgrades. Claimant has failed to provide this Court with any
7 evidence that he paid more than \$2,144.00 for his memberships and membership upgrade/rewards.
8 The Objection seeks only to limit Claimant’s claim to the amount that he has actually paid. In his
9 Response, Claimant appears to think that he is entitled to a \$3,444.00 claim in this bankruptcy case
10 based on his memberships upgrades and rewards. Claimant provides no evidence or case law in
11 support of his assertion that his memberships and upgrades/rewards entitled to him a claim against
12 this estate beyond what he actually paid to the Debtor.

13 **II. THE CLAIM IS EXCESSIVE AND CASE LAW SUPPORTS LIMITING THE**
14 **CLAIM TO THE AMOUNT PAID BY CLAIMANT TO THE DEBTOR**

15 In the Response, Claimant argues that the value of his claim should be based on his
16 membership upgrades/rewards. The amount of membership upgrades/rewards has no bearing on the
17 rejection damages incurred by Claimant. Front Sight rewards, points, and credits were not able to be
18 used outside of the Debtor’s pre-petition business, which is no longer operating under the same
19 management or under the same membership program. Therefore, the membership upgrades and
20 rewards have no value.

21 Claimant only paid \$2,144.00 for all memberships and membership upgrades/rewards.
22 Claimant has not been damaged in the amount of \$3,444.00. Bankruptcy courts routinely find that
23 rejection damages from termination of memberships are based on what the respective claimants paid
24 for their memberships. *See In re Nittany Enterprises, Inc.*, 502 B.R. 447, 456-7 (Bankr. W.D. Va.
25 2012) (allowing a general unsecured claim only as to a pro-rated amount of the membership
26 purchase price); *In re Palmas del Mar Country Club, Inc.*, 443 B.R. 569 (Bankr. D. P.R. 2010)
27 (disallowing priority claims filed by the country club’s members for refund of the membership
28 deposit and allowing the claims as general unsecured claims in the amount of the membership

1 deposit); *In re Yellowstone Mountain Club, LLC*, 469 Fed. Appx. 584 (9th Cir. 2012) (holding that
2 claimant’s allegations for damages above and beyond his \$250,000 membership deposit were
3 speculative and not provided for under the membership agreement).

4 For example, *In re Four Star Financial Services, LLC* (“*Four Star*”), 469 B.R. 30 (C.D. Cal.
5 2012), the claimant paid an initiation fee to purchase a transferable lifetime membership which
6 entitled the member to use various campgrounds for life. On average, the initiation fee was \$4,500
7 plus annual dues. *Id.* at 31. The claimant argued he was entitled to a priority claim and that “he
8 contracted for a transferable, lifetime membership, and the services that go with it, and at the time of
9 the bankruptcy he had not yet received all these services.” *Id.* at 33. In *Four Star*, the district court
10 noted that “the initiation fee paid here by Appellee entitled him to immediate use of the campground
11 network. With the payment of the initiation fee, Appellee was immediately a member. He was not
12 waiting for services to be rendered by TAI. Somewhat illogically, Appellee points to his lifetime
13 membership and transferability as evidence of undelivered services. Assuming this were true,
14 Appellee's bargained-for services would not be delivered for several generations. While not
15 discounting the premium placed on the longevity and transferability of the memberships, the Court
16 finds these benefits inherent in the membership Appellee received immediately, rather than
17 something incapable of delivery for several generations ... Appellee paid an initiation fee and was
18 immediately entitled to avail himself of the entire campground network. Appellee contracted with
19 his eyes wide open, and while he might not have foreseen the financial trouble of TAI, this was a
20 risk he took in signing up to be a member of the campground network.” *Id.* at 35. The district court
21 ultimately found that “the initiation fee entitled Appellee to the immediate use of the facilities. The
22 initiation fee was not paid for the future guarantee of services and monthly dues were required in
23 order to continue utilizing the campground network ... In neither case was the initiation fee offered
24 as security for the future provision of services; it was merely the price of admission. Thus, the
25 initiation fee was not a deposit and the bankruptcy court erred by giving Appellee’s Claim
26 priority...” *Id.* While the claimant was not seeking a claim more than what he had paid, the analysis
27 done by the district court is helpful in this matter as Claimant received his membership when
28 purchased and he took the risk when signing up with the Debtor that it may have unforeseen

1 financial trouble.

2 The ultimate burden of persuasion with respect to an objection to claim is always on the
3 claimant. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991). Claimant has failed to
4 meet this burden. Claimant has failed to produce any evidence supporting the amount of Claim 64
5 or controverting the Liquidating Trustee’s evidence regarding the amount Claimant paid for his
6 memberships and upgrades. Claim 64 is clearly excessive and Claimant’s allegations for damages
7 above the amount paid for his memberships and upgrades are speculative and not provided for under
8 the terms of the Debtor’s memberships. The request to reduce Claim 64 to the amount paid by
9 Claimant is supported by case law, and the Objection should be sustained.

10 **III. CONCLUSION**

11 For the foregoing reasons, the Liquidating Trustee respectfully requests that the Court sustain
12 the Objection in its entirety, including as it relates to Claim 64.

13
14 DATED: April 6, 2023

BG Law LLP

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16 By: /s/ Susan K. Seflin

Susan K. Seflin

Jessica S. Wellington

17
18 Attorneys for Province, LLC, solely in its capacity as
19 the Liquidating Trustee of the Front Sight Creditors
20 Trust

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 THE RESPONSE FILED BY CLAIMANT PETER PASSARETTI 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:

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

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3 420 Spotted Saddle Ct.
4 Murfreesboro, TN 37129-5124

(3) VIA E-Mail:

5 Peter Passaretti – peddlerp@yahoo.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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