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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

In re:	Case No. 22-11824-abl
Front Sight Management LLC,	Chapter 11
Debtor.	**Hearing Date:** November 18, 2022 **Hearing Time:** 9:30 a.m.

DEBTOR'S REPLY TO JAMES HARRISS' RESPONSE TO DEBTOR'S FIRST OMNIBUS OBJECTION TO CLAIMS

Front Sight Management LLC, the chapter 11 debtor and debtor in possession herein (the "Debtor"), hereby submits its reply (the "Reply") to the response [ECF No. 491] (the "Response") filed by James Harriss ("Claimant" or "Harriss") to the Debtor's *First Omnibus Objection (1) Reducing and Allowing Certain Member Claims and (2) Disallowing and expunging Certain Other Member Claims* [ECF No. 411] (the "Objection"). In his Response, Harriss also includes a request to allow his ballot to be counted. In support of the Reply, the Debtor respectfully represents as follows:

I. INTRODUCTION

Harriss filed Proof of Claim 217-1 ("Claim 217") in the amount of a $360,691.00 general unsecured claim against the Debtor. Claimant attached four pieces of paper to Claim 217 – none of which provide evidence to entitle Claimant to a $360,691.00 claim against the Debtor. The

documents attached to the Response also do not support Claimant's putative claim. The Debtor's books and records reflect that Harriss purchased a $250 diamond membership in 2011, and a $1,000 upgrade shortly thereafter. I.e., the Debtor's records reflect that Harriss spent a total of $1,250 on his lifetime membership and membership upgrades. The Debtor's records also reflect that Harriss has attended courses, which value far exceeds the total amount of money spent by Harriss. Harriss has failed to provide this Court with any evidence that Harriss paid more than $1,250 for his membership and membership upgrade/rewards.

Harriss had use of the Debtor's facilities and use of his lifetime membership for 11 years. Harriss has used services of the Debtor valued at more than the $1,250 that he has spent. By the Objection, the Debtor is seeking only to limit Harriss' claim to the amount that he has actually paid – and the Debtor is not seeking to reduce what was paid by the value of services received by Harriss or by doing a pro rata analysis of how much of the "lifetime" membership was Harriss able to use.

In his Response, Harriss appears to think that he is entitled to a $360,691 claim against the Debtor because the Debtor's "Founder" memberships may have had a certain value at some point. Harriss provides no evidence or case law in support of his assertion that his member upgrades/rewards entitled to him a $360,691 claim against this estate.

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

In the Response, Claimant argues that the value of his claim should be based on the advertised value of the memberships. Claimant contends that the Debtor was obligated to provide training at no further cost for the rest of Claimant's life as well as the lives of five other people. The Debtor's valuation of the benefits provided by the membership and the cost that the Debtor advertised the memberships for has no bearing on the rejection damages incurred by Claimant.

Claimant only paid $1,250 for all memberships and membership upgrades, and notably, the Response does not contest this fact. Claimant has not been damaged in the amount of $360,691. "Front Sight Credits" are credits on a member's account that can only be used at the Debtor's facility. They are not real money and have no value outside of the Debtor's business. The memberships in Claimant's account unfortunately have no value. While they may have had value at

one time, they currently have no value as the new equity investor in this case is rejecting all existing memberships as of the effective date of the Debtor's proposed plan.

The cases cited by Claimant, *In re Bridgeport Plumbing Products ("Bridgeport")*, 178 B.R. 563 (Bankr. M.D. Ga. 1994) and *In re Sea Oaks Country Club, LLC*, 2020 WL 6588412 (Bankr. D.N.J. Nov. 10, 2020) are inapposite to the facts before this Court. *Bridgeport* dealt with leased equipment, and not alleged damages arising out of termination of a club membership. *Sea Oaks* dealt with whether a membership was an executory contract under Section 365 of the Bankruptcy Code. *Sea Oaks* did not discuss the proper measure of rejections damages from termination of a membership. These cases are simply irrelevant to the issue before the Court.

Bankruptcy courts routinely find that rejection damages from termination of memberships are based on what the respective claimants paid for their memberships and that they are not entitled to priority:

- *In re Nittany Enterprises, Inc. ("Nittany")*, 502 B.R. 447, 456-7 (Bankr. W.D. Va. 2012): In *Nittany*, the claimant had purchased a three year membership for $4,960 in November 2008 and the debtor closed its doors in February 2011. The *Nittany* claimant filed a general unsecured claim in the amount of $6,000 (which included interest that claimant paid to finance the purchase). The bankruptcy court found that the claimant was "incorrect to believe that a breach of his three year membership in year three entitles him to a full refund of the membership fee, plus the interest he paid to finance the purchase." *Id*, at 457. The bankruptcy court ultimately determined that the claimant suffered some pecuniary loss and calculated that loss as follows: "First, the Claimant is entitled to receive the $30.00 he paid for the option to renew his membership in the Debtor's center. The closing of the Debtor's center was a breach of the option and the consideration paid should be returned to the [claimant]. Second, the Agreement was breached with approximately 302 days remaining on the 1,095 day membership. The number of lost days represents 28% of the entire membership term. Because the Court has found that Mr. Porter's particular agreement provided him with the right to purchase goods in the Roanoke store, and that this right was breached when Nittany closed its doors, the Court believes it is appropriate to quantify the 302 day, or 28%,

loss of the purchasing opportunity. **The Court finds that the value of the loss represents a pro-rated amount of the membership purchase price** … The Claimant is owed $1,367.96, which equates to approximately 28% of the $4,960 purchase price. The Court finds that the Claimant has a general unsecured claim in the amount of $1,397.96 and the remaining balance of the Claimant's claim is disallowed." *Id*. at 457-58 (emphasis added). I.e., if this Court were to use the *Nittany* court's analysis, Harriss would be entitled to, at most, a pro-rated amount of the membership purchase price. Harriss had use of his membership for 11 years. Assuming, arguendo, Harriss is 45 years old today and because the average life expectancy for a male in the United States is 77 years old, Harriss' remaining time to use his Front Sight membership would be 32 years. 32 plus 11 (the actual number of years the membership was used by Harriss) equals 43. Under this hypothetical, Harriss used his membership for 25.56% of its "lifetime", and would be entitled to a claim of 74.4% times his total amount spent of $1,250, or $930 (74.4% x 1250 = 930). The Debtor, however, is seeking only to limit Harriss' claim to the total amount spent, or $1,250.

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

the membership Appellee received immediately, rather than something incapable of delivery for several generations ... Appellee paid an initiation fee and was immediately entitled to avail himself of the entire campground network. Appellee contracted with his eyes wide open, and while he might not have foreseen the financial trouble of TAI, this was a risk he took in signing up to be a member of the campground network." *Id.* at 35 (emphasis added). The district court ultimately found that "the initiation fee entitled Appellee to the immediate use of the facilities. The initiation fee was not paid for the future guarantee of services and monthly dues were required in order to continue utilizing the campground network … **In neither case was the initiation fee offered as security for the future provision of services; it was merely the price of admission**. Thus, the initiation fee was not a deposit and the bankruptcy court erred by giving Appellee's Claim priority…" *Id*. (emphasis added). While the claimant was not seeking a claim more than what he had paid, the analysis done by the district court is helpful in this matter as Harriss received his membership when purchased and he took the risk when signing up with the Debtor that it may have unforeseen financial trouble.

- *In re Palmas del Mar Country Club, Inc. ("Palmas")*, 443 B.R. 569 (Bankr. D. P.R. 2010): In *Palmas,* the debtor objected to priority claims asserted by former members of its country club for refund of their up-front payments. In its analysis, the district court noted that the "rights of such Claimants were fully vested upon payment of the Membership Deposit because upon such payment they became club members, which was what the Membership Deposit made them entitled to. The up-front payments provided by the club members were for an immediate service which was provided, and not for a future right to buy, lease or rent any property. The rights and responsibilities of the Debtor were both fully operative and were being delivered and provided prior to the filing of the bankruptcy petition." *Id.* at 575. Here, Harriss received his membership in 2011 and has been a member of the Debtor for 11 years. At most, he is entitled to a general unsecured claim for the amount that he actually paid for his membership and upgrades.

- *In re Yellowstone Mountain Club, LLC ("Yellowstone")*, 469 Fed.Appx. 584

(9th Cir. 2012): In *Yellowstone*, there was a membership agreement that controlled the terms of any rejection damages and provided that damages are limited to the amount paid by the member. The Ninth Circuit held that the claimant's allegations for damages above and beyond his $250,000 membership deposit were speculative and not provided for under the membership agreement. In so reasoning, the Ninth Circuit stated: "The Membership Agreement clearly provides that it can be unilaterally terminated by either party; Sumpter can resign or the Club can recall his membership 'at any time for any or no reason whatsoever.' In either case the agreement provides that the Club will compensate Sumpter by returning his $250,000 deposit. We agree with the bankruptcy court and hold that these provisions limit Sumpter's rejection damages to the return of his deposit." *Id.* at 586–87. Here, there is nothing in the Debtor's membership agreements that prohibits the Debtor from terminating the memberships or the members from resigning. However, in contrast to the *Yellowstone*, the terms of the Debtor's memberships provide that the amount paid for the Debtor's memberships are non-refundable. Response, Exhibit C. I.e., if this Court were to use the analysis in *Yellowstone*, Claim 217 should be denied in its entirety. The Debtor, however, is seeking only to limit Harriss' claim to the total amount spent, or $1,250.

The ultimate burden of persuasion with respect to an objection to claim is always on the claimant. *Wright v. Holm (In re Holm),* 931 F.2d 620, 623 (9th Cir. 1991). Claimant has failed to meet this burden. Claimant has failed to produce any evidence supporting the amount of Claim 217 or controverting the Debtor's evidence regarding the amount Claimant paid for his memberships and upgrades. Claim 217 is clearly excessive and Harriss' allegations for damages above the amount paid for his memberships and credits are speculative and not provided for under the terms of the Debtor's memberships. The Debtor's request to reduce Claim 217 to the amount paid by Claimant is supported by case law, and the Objection should be sustained.

III. THE OBJECTION IS PROPER PURSUANT TO COURT ORDER

In the Response, Harriss argues that the Objection should be overruled because the Objection is an omnibus objection and it does not fall within one of the enumerated provisions in Rule 3007(d) of the Federal Rules of Bankruptcy Procedure and it is not authorized by Court order. This is simply

not true. The Court authorized the Debtor to bring the Objection through the very order that Harriss curiously contends does not apply to his claim. Claim 217 is based on Harriss' memberships and rewards. Pursuant to the Order approving the Debtor's Second Amended Disclosure Statement [ECF No. 403] (the "Disclosure Statement Order"):

> To the extent members file a proof of claim in response to the Rejection Bar Date Notice and assert a claim based on promotional offers relating to member rewards (versus the amount of money actually spent by the member at the Debtor's business), the Debtor is authorized (i) to file omnibus objections to such claims prior to the Confirmation Hearing, and (ii) to submit an alternative Ballot Tally which reflects such members' Ballot(s) in an amount equal to what they have spent at the Debtor's business for their membership and membership upgrades.

Disclosure Statement Order, 8:12-18.

This is exactly what the Debtor has done through the Objection. The basis for the Debtor's objection to each of the claims in the Objection, including Claim 217, is that the claims were filed by members who are asserting that they are entitled to a claim in excess of the amount of money actually spent by the member for their membership and membership upgrades. Harriss' contention that Claim 217 does not fall within the provisions of the Disclosure Statement Order is without merit.

IV. CLAIMANT IS NOT ENTITLED TO VOTE ON THE DEBTOR'S SECOND AMENDED PLAN

Harriss requests that any ballot cast in connection with Claim 217 be counted in the full amount of the claim. Harriss' request is not proper under Rule 3018(a) of the Federal Rules of Bankruptcy Procedure. Rule 3018(a) states: "Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a). Harriss failed to file a motion under Rule 3018(a) and properly notice such motion. It is not sufficient to put such a request in an opposition. Harriss has represented to the Debtor's counsel that he is a member of the New York bar and Louisiana bar. Being an attorney, Harriss should understand the need for compliance with Bankruptcy Rules. As Harriss failed to comply with the

procedures set forth in Rule 3018(a), the Court should deny Harriss' request for his ballot to be counted. To the extent that the Court is inclined to grant his request, the amount of Claim 217 should be reduced to $1,250 for voting purposes.

V. CONCLUSION

For the foregoing reasons, the Debtor respectfully requests that the Court sustain the Objection in its entirety.

DATED: November 10, 2022

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