

1 STEVEN T. GUBNER – NV Bar No. 4624
 SUSAN K. SEFLIN – CA Bar No. 213865 – Admitted *Pro Hac Vice*
 2 JESSICA S. WELLINGTON – CA Bar No. 324477 – Admitted *Pro Hac Vice*
 BG LAW LLP
 3 300 S. 4th Street, Suite 1550
 Las Vegas, NV 89101
 4 Telephone: (702) 835-0800
 Facsimile: (866) 995-0215
 5 Email: sgubner@bg.law
 sseflin@bg.law
 6 jwellington@bg.law

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

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

<p>11 In re:</p> <p>12 Front Sight Management LLC,</p> <p>13</p> <p>14 Debtor.</p>	<p>Case No. 22-11824-abl</p> <p>Chapter 11</p> <p>Hearing Date: January 9, 2023 Hearing Time: 9:30 a.m.</p>
--	--

17 **LIQUIDATING TRUSTEE’S REPLY TO THE RESPONSE FILED BY CLAIMANT JAMES**
 18 **DUTTON TO THE FIFTH OMNIBUS OBJECTION (1) REDUCING AND ALLOWING**
 19 **CERTAIN MEMBER CLAIMS AND (2) DISALLOWING AND EXPUNGING CERTAIN**
 20 **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. 610] (the “Response”) filed by James Dutton (“Claimant” or
 23 “Dutton”) to the *Fifth Omnibus Objection (1) Reducing and Allowing Certain Member Claims and*
 24 *(2) Disallowing and expunging Certain Other Member Claims* [ECF No. 558] (the “Objection”)
 25 filed by Front Sight Management LLC (the “Debtor”).¹ In support of the Reply, the Liquidating
 26 Trustee respectfully represents as follows:

27 _____
 28 ¹ As of the effective date of the Debtor’s confirmed chapter 11 plan of reorganization, the
 Liquidating Trustee was vested with sole authority to prosecute most objections to claims in this
 bankruptcy case.

1 **I. INTRODUCTION**

2 Dutton filed Proof of Claim 884-1 (“Claim 884”) in the amount of a \$638,400 general
3 unsecured claim. Claimant attached four pieces of paper to Claim 884—none of which provide
4 evidence sufficient to entitle Claimant to a \$638,400 claim in this bankruptcy case. The documents
5 attached to the Response also do not support Claimant’s putative claim. As stated in the Objection,
6 the Debtor’s books and records reflect that Dutton paid \$1,097 for his memberships and membership
7 upgrades. Dutton has failed to provide this Court with any evidence that Dutton paid more than
8 \$1,097 for his memberships and membership upgrade/rewards. In fact, the documents attached to
9 Claim 884 and the Response, only evidence that Dutton has paid \$500 for his memberships and
10 membership upgrades/rewards.

11 The Objection seeks only to limit Dutton’s claim to the amount that he has actually paid. In
12 his Response, Dutton appears to think that he is entitled to a \$638,400 claim in this bankruptcy case
13 because the Debtor’s “Founder” and “Legacy” memberships may have had a certain value at some
14 point. Dutton provides no evidence or case law in support of his assertion that his memberships and
15 upgrades/rewards entitled to him a \$638,400 claim against this estate.

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

18 In the Response, Claimant argues that the value of his claim should be based on the
19 advertised value of the memberships. The Debtor’s valuation of the benefits provided by the
20 membership and the cost that the Debtor advertised the memberships for has no bearing on the
21 rejection damages incurred by Claimant.

22 Claimant only paid \$1,097 for all memberships and membership upgrades, and notably, the
23 Response does not contest this fact. Claimant has not been damaged in the amount of \$638,400.
24 Bankruptcy courts routinely find that rejection damages from termination of memberships are based
25 on what the respective claimants paid for their memberships. *See In re Nittany Enterprises, Inc.*, 502
26 B.R. 447, 456-7 (Bankr. W.D. Va. 2012) (allowing a general unsecured claim only as to a pro-rated
27 amount of the membership purchase price); *In re Palmas del Mar Country Club, Inc.*, 443 B.R. 569
28 (Bankr. D. P.R. 2010) (disallowing priority claims filed by the country club’s members for refund of

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

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

1 purchased and he took the risk when signing up with the Debtor that it may have unforeseen
2 financial trouble.

3 The ultimate burden of persuasion with respect to an objection to claim is always on the
4 claimant. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991). Claimant has failed to
5 meet this burden. Claimant has failed to produce any evidence supporting the amount of Claim 884
6 or controverting the Debtor's evidence regarding the amount Claimant paid for his memberships and
7 upgrades. Claim 884 is clearly excessive and Dutton's allegations for damages above the amount
8 paid for his memberships and credits are speculative and not provided for under the terms of the
9 Debtor's memberships. The request to reduce Claim 884 to the amount paid by Claimant is
10 supported by case law, and the Objection should be sustained.

11 **III. CONCLUSION**

12 For the foregoing reasons, the Liquidating Trustee respectfully requests that the Court sustain
13 the Objection in its entirety, including as it relates to Claim 884.

14 DATED: January 3, 2023

BG Law LLP

16 By: /s/ Susan K. Seflin

Susan K. Seflin

Jessica S. Wellington

17 Attorneys for Province, LLC, solely in its capacity as
18 the Liquidating Trustee of the Front Sight Creditors
19 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 **January 3, 2023**, I served the following document:

LIQUIDATING TRUSTEE’S REPLY TO THE RESPONSE FILED BY CLAIMANT JAMES DUTTON TO THE FIFTH 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:

- **JASON BLUMBERG** Jason.blumberg@usdoj.gov
- **CANDACE C CARLYON** ccarlyon@carlyoncica.com, CRobertson@carlyoncica.com;nrodriguez@carlyoncica.com;9232006420@filings.docketbird.com;Dcica@carlyoncica.com
- **CHAPTER 11 - LV** USTPRegion17.lv.ecf@usdoj.gov
- **DAWN M. CICA** dcica@carlyoncica.com, nrodriguez@carlyoncica.com;crobertson@carlyoncica.com;dmcica@gmail.com;dcica@carlyoncica.com;tosteen@carlyoncica.com;3342887420@filings.docketbird.com
- **WILLIAM C DEVINE** william@devine.legal, courtney@devine.legal;devinewr72773@notify.bestcase.com
- **THOMAS H. FELL** tfell@fennemorelaw.com, clandis@fennemorelaw.com;CourtFilings@fennemorelaw.com
- **PHILIP S. GERSON** Philip@gersonnvlaw.com
- **STEVEN T GUBNER** sgubner@bg.law, ecf@bg.law
- **RAMIR M. HERNANDEZ** rhernandez@wrightlegal.net, jcraig@wrightlegal.net;nvbkfiling@wrightlegal.net
- **MICHAEL R. HOGUE** hoguem@gtlaw.com, LVLitDock@GTLAW.com;flintza@gtlaw.com;navarrom@gtlaw.com
- **JASON B KOMORSKY** jkomorsky@bg.law
- **BART K. LARSEN** BLARSEN@SHEA.LAW, 3542839420@filings.docketbird.com
- **NICOLE E. LOVELOCK** nlovelock@joneslovelock.com, ljanuskevicius@joneslovelock.com
- **EDWARD M. MCDONALD** edward.m.mcdonald@usdoj.gov
- **DAVID MINCIN** dmincin@mincinlaw.com, cburke@mincinlaw.com
- **TRACY M. O'STEEN** tosteen@carlyoncica.com, crobertson@carlyoncica.com;nrodriguez@carlyoncica.com;ccarlyon@carlyoncica.com
- **TERESA M. PILATOWICZ** tpilatowicz@gtg.legal, bknotices@gtg.legal
- **SAMUEL A. SCHWARTZ** saschwartz@nvfirm.com, ecf@nvfirm.com;schwartzsr45599@notify.bestcase.com;eanderson@nvfirm.com;samid@nvfirm.com
- **SUSAN K. SEFLIN** sseflin@bg.law
- **BRIAN D. SHAPIRO** brian@brianshapirolaw.com, kshapiro@brianshapirolaw.com;6855036420@filings.docketbird.com
- **STRETTO** ecf@cases-cr.stretto-services.com, aw01@ecfcbis.com,pacerpleadings@stretto.com
- **U.S. TRUSTEE - LV - 11** USTPRegion17.lv.ecf@usdoj.gov
- **JESSICA S. WELLINGTON** jwellington@bg.law, ecf@bg.law

1 **(2) VIA U.S. First Class Mail:**

2 Claimant
3 James Dutton
4 25700 N Big Springs Ranch Road
5 Paulden, AZ 86334-3445

6 **(3) VIA E-MAIL:**

7 Claimant
8 James Dutton
9 Email: we2r4christ@gmail.com

10 I declare that I am employed in the office of a member of the bar of this Court at whose
11 direction the service was made. I declare under penalty of perjury under the laws of the United States
12 of America and the State of California that the foregoing is true and correct.

13 Executed January 3, 2023, at Woodland Hills, California.

14 /s/ Jessica Studley
15 JESSICA STUDLEY