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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: 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 **DAVID MICHAEL HODGES 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. 727] (the “Response”) filed by David Michael Hodges
 23 (“Claimant”) to the Liquidating Trustee’s *Ninth Omnibus Objection (1) Reducing and Allowing*
 24 *Certain Member Claims and (2) Disallowing and expunging Certain Other Member Claims* [ECF
 25 No. 695] (the “Objection”).¹ In support of the Reply, the Liquidating Trustee respectfully represents
 26 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 357-1 (“Claim 357”) in the amount of a \$2,097.00 general
3 unsecured claim. The amount of Claim 357 is based on Claimant’s payment of \$149.00 to the
4 Debtor for his initial membership, Claimant’s payment of \$50.00 to upgrade his membership, and
5 \$1,898.00 in Front Sight credits. Through the Objection, the Liquidating Trustee seeks to reduce the
6 amount of Claim 357 to \$199.00, which is the amount that Claimant paid to the Debtor for his
7 membership and membership upgrades. As stated in the Objection, the Debtor’s books and records
8 reflect that Claimant paid \$199.00 for his membership and membership upgrades. Claimant has
9 failed to provide this Court with any evidence that he paid more than \$199.00 for his memberships
10 and membership upgrade/rewards. In fact, in Claim 357 and the Response, Claimant admits that he
11 only paid \$199.00 for his membership and membership upgrades/rewards.

12 The Objection seeks only to limit Claimant’s claim to the amount that he has actually paid.
13 In his Response, Claimant appears to think that he is entitled to an additional \$1,898.00 claim in this
14 bankruptcy case because that was the amount of Front Sight credits in his account. Claimant
15 provides no evidence or case law in support of his assertion that his memberships and
16 upgrades/rewards entitled to him a claim against this estate beyond what he actually paid to the
17 Debtor.

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

20 In the Response, Claimant argues that the value of his claim should be based on his
21 membership rewards. The amount of membership rewards, i.e., Front Sight credits, has no bearing
22 on the rejection damages incurred by Claimant. Front Sight credits were not able to be used outside
23 of the Debtor’s business, which is no longer operating, and Claimant did not pay the Debtor for the
24 credits.

25 Claimant only paid \$199.00 for all memberships and membership upgrades/rewards, and
26 notably, the Response does not contest this fact. Claimant has not been damaged in the amount of
27 \$2,097.00. Bankruptcy courts routinely find that rejection damages from termination of
28 memberships are based on what the respective claimants paid for their memberships. *See In re*

1 *Nittany Enterprises, Inc.*, 502 B.R. 447, 456-7 (Bankr. W.D. Va. 2012) (allowing a general
2 unsecured claim only as to a pro-rated amount of the membership purchase price); *In re Palmas del*
3 *Mar Country Club, Inc.*, 443 B.R. 569 (Bankr. D. P.R. 2010) (disallowing priority claims filed by
4 the country club’s members for refund of the membership deposit and allowing the claims as general
5 unsecured claims in the amount of the membership deposit); *In re Yellowstone Mountain Club, LLC*,
6 469 Fed. Appx. 584 (9th Cir. 2012) (holding that claimant’s allegations for damages above and
7 beyond his \$250,000 membership deposit were speculative and not provided for under
8 the membership agreement).

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

1 as security for the future provision of services; it was merely the price of admission. Thus, the
2 initiation fee was not a deposit and the bankruptcy court erred by giving Appellee’s Claim
3 priority...” *Id.* While the claimant was not seeking a claim more than what he had paid, the analysis
4 done by the district court is helpful in this matter as Claimant received his membership when
5 purchased and he took the risk when signing up with the Debtor that it may have unforeseen
6 financial trouble.

7 The ultimate burden of persuasion with respect to an objection to claim is always on the
8 claimant. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991). Claimant has failed to
9 meet this burden. Claimant has failed to produce sufficient supporting the amount of Claim 357 or
10 controverting the Liquidating Trustee’s evidence regarding the amount Claimant paid for his
11 memberships and upgrades. Claim 357 is clearly excessive and Claimant’s allegations for damages
12 above the amount paid for his memberships and upgrades are speculative and not provided for under
13 the terms of the Debtor’s memberships. The request to reduce Claim 357 to the amount paid by
14 Claimant is supported by case law, and the Objection should be sustained.

15 **III. CONCLUSION**

16 For the foregoing reasons, the Liquidating Trustee respectfully requests that the Court sustain
17 the Objection in its entirety, including as it relates to Claim 357.

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19 DATED: April 6, 2023

BG Law LLP

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21 By: /s/ Susan K. Seflin
22 Susan K. Seflin
23 Jessica S. Wellington
24 Attorneys for Province, LLC, solely in its capacity as
25 the Liquidating Trustee of the Front Sight Creditors
26 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 THE RESPONSE FILED BY CLAIMANT DAVID MICHAEL HODGES 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:

1 Claimant:
2 David Michael Hodges
3 9239 Westhill Road
4 Lakeside, CA 92040

(3) VIA E-Mail:

5 David Michael Hodges – dmhodes@tutanota.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.

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

11 /s/ Jessica Studley
12 JESSICA STUDLEY
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