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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: :  
: Chapter 11  
AIRFASTTICKETS, INC., :  
: Case No. 15-11951 (SHL)  
Debtor. :  
----- X

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
THE DEBTOR TO TAKE DISCOVERY FROM PAYPAL, INC. UNDER  
11 U.S.C. § 105(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004**

The above-captioned debtor and debtor in possession (the “Debtor”), by and through its undersigned counsel, files this motion (the “Rule 2004 Motion”)<sup>1</sup>, for entry of an order,

<sup>1</sup> If this Rule 2004 Motion is granted, the Debtor reserves the right to conduct additional discovery and to seek authority to serve deposition notices and/or subpoenas, if necessary, after it has received and reviewed any documents produced in response to its discovery requests.

substantially in the form attached hereto as **Exhibit 1** (the “Proposed Order”), under section 105(a) of the Bankruptcy Code, Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 45 of the Federal Rules of Civil Procedure (the “Federal Rules”), which is made applicable to this bankruptcy case under Bankruptcy Rule 9016, and Rule 2004-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), authorizing the Debtor to take discovery from PayPal, Inc. (the “Financial Institution”), a financial institution conducting certain financial transactions involving the Debtor and its business, and directing the Financial Institution to produce documents in response to the request for production and to appear for an oral examination under oath pursuant to the Subpoena attached to this Rule 2004 Motion as **Exhibit 2**, or substantially similar requests for production, including without limitation additional sets of requests for production and subpoenas as to the same or similar subject matters. In support of the Rule 2004 Motion, the Debtor respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. Discovery of the Financial Institution under Bankruptcy Rule 2004 is necessary for the Debtor to investigate the Debtor’s properties and financial affairs, to obtain missing bank statements, copies of checks, deposit slips, wire and electronic fund transfers documentation and other information related to the Debtor’s prepetition transfers and financial transactions, and to ascertain the existence of the bankruptcy estate’s assets, liabilities, claims, and causes of action that may affect the administration of the Debtor’s estate, as well as the Debtor’s formulation and consummation of a chapter 11 plan. Thus, the Debtor respectfully requests approval of this Rule 2004 Motion.

## **BACKGROUND**

### **I. Debtor's Prepetition Operations**

2. The Debtor Airfasttickets, Inc. ("Airfasttickets") is a Delaware corporation that had its headquarters in New York, New York and operated a multi-national business, together with several of its wholly owned foreign subsidiaries, Fast Group Deutschland AG (Germany), Airfasttickets, Ltd. (United Kingdom), Air Fast Tickets Spolka z.o.o. (Poland), Air Fast Tickets Ltd. (Hong Kong), and Fast Group S.A. (Greece) (collectively, the "Subsidiaries").

3. Airfasttickets was formed by Nikolaos Koklonis in 2011 and, at all relevant times, was managed and controlled by Nikolaos Koklonis as the President and Chief Executive Officer of Airfasttickets, the sole director and Chairman of the Board of Directors of Airfasttickets, and its controlling (90%) stockholder. Airfasttickets was also managed by two officers: (a) Frank Ferro, the Chief Financial Officer of Airfasttickets; and (b) Eleni Vareli, the Chief Operating Officer of Airfasttickets and its minority (10%) stockholder.

4. To operate its business, Airfasttickets used proprietary software that it developed and owned to help consumers find low cost domestic and international airfares. In that regard, Airfasttickets' business model was similar to the airline ticketing services provided by Expedia.com and other online travel agencies.

5. Airfasttickets and its Subsidiaries operated in international markets pursuant to accreditation and license agreements issued by the International Air Transport Association ("IATA"). IATA is the trade association for the world's airlines, representing more than 250 airlines and approximately 85% of the world's total air traffic.

6. Upon information and belief, in connection with Airfasttickets' operations, Airfasttickets' customers purchased airline tickets from Airfasttickets' (US) website,

www.airfasttickets.com, and paid for airline tickets using Airfasttickets' (US) bank accounts located at various financial institutions, including PayPal.

7. In 2014, IATA revoked Airfasttickets' accreditation and license agreements because Airfasttickets failed to comply with IATA's rules, regulations, requirements, and accreditation standards by, among other things, failing to remit payment for its ticket sales to the airlines. At the time the IATA accreditation and license agreements were revoked and terminated, Airfasttickets or its Subsidiaries owed over \$70 million to over 400 airlines and approximately \$25 million to vendors.

8. After IATA revoked Airfasttickets' accreditation and license agreements, Airfasttickets attempted to stay in business by purchasing airline tickets through affiliated third-party ticket consolidators, rather than directly through the airlines. Some or all of the ticket consolidators and other service providers used by Airfasttickets, including Worldwide Internet Services Limited, Lockdrive Limited, London Travel & Tours Limited, Amphion Efthymia Ltd., Travelport LP, and Worldspan (collectively, "Ticket Consolidators"), were managed by, among others, Mr. Koklonis, or Mr. Koklonis maintained ownership or significant financial interest in some or all of the Ticket Consolidators.

9. Eventually, Airfasttickets was unable to continue operations, suffered from severe liquidity issues, and did not have sufficient funds to pay its employees, vendors, and other creditors. Under a series of agreements with Airfasttickets, certain investors loaned Airfasttickets \$15 million between October 2014 and June 2015. As a condition to the loan, Jason Chen (one of the investors) and his wife, Lisa Chen, along with Mr. Koklonis, were appointed to Airfasttickets' board of directors. Mr. Chen was appointed as the Chief Executive Officer at the same time.

10. In later May and early June 2015, Airfasttickets' board of directors, certain managers, and its legal and financial advisors met to discuss Airfasttickets' financial situation and alternatives to help the company recover from its severe insolvency, including possible restructuring or bankruptcy.

## **II. Debtor's Proceedings in the Delaware Court of Chancery**

11. In June 2015, Mr. Koklonis filed a complaint in the Delaware Court of Chancery (the "Chancery Court"), seeking a judicial determination that he was the sole director, Chairman of the Board, CEO, President, and majority stockholder of Airfasttickets.

12. Under the Order dated July 21, 2015, Adam Meislik was duly appointed as the receiver of Airfasttickets by the Chancery Court. Under the Order, Mr. Meislik has all powers available to a receiver under 8 Del. C. § 291, including the power to take charge of the assets, estate, effects, business, and affairs of Airfasttickets; to collect the outstanding debts, claims, and property due and belonging to Airfasttickets; and to prosecute and defend, in the name of Airfasttickets or otherwise, all claims or suits.

## **III. The Debtor's Bankruptcy Proceedings**

13. On July 27, 2015, certain of the Airfasttickets' creditors filed an involuntary petition against Airfasttickets in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), seeking an order for relief under chapter 7 of title 11 of the United States Code (the "Bankruptcy Code").

14. Under the summons issued in conjunction with the involuntary petition, Airfasttickets had until August 21, 2015 to respond to the involuntary petition. Airfasttickets' time to respond to the involuntary petition was extended through and including September 21, 2015 pursuant to a stipulation filed with the Bankruptcy Court on August 20, 2015.

15. On September 21, 2015, Airfasttickets filed an answer, consenting to the entry of an order for relief under the Bankruptcy Code, and also filed its Motion to Convert Chapter 7 Case to Chapter 11 Pursuant to 11 U.S.C. § 706(a) (the “Motion to Convert”) seeking to convert Airfasttickets’ case to one under chapter 11 of the Bankruptcy Code.

16. On October 27, 2015, the Bankruptcy Court granted the Motion to Convert and entered an order for relief under the Bankruptcy Code. Thereafter, Airfasttickets has been managing its affairs as a debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

17. On November 24, 2015, the Bankruptcy Court entered an Order approving the Debtor’s sale of its intellectual property and software and certain related assets.

18. Following the sale, Mr. Meslik and the Debtor’s professionals continue to conduct investigations of the Debtor’s books and records concerning the Debtor’s properties and financial affairs. As part of the investigations, the Debtor has determined that it is necessary to obtain missing bank statements, copies of checks, deposit slips, wire and electronic fund transfers documentation and other information related to the Debtor’s various prepetition transactions and prepetition transfers to ascertain, among other things, the existence of the bankruptcy estate’s assets, liabilities, claims, and causes of action that may affect the administration of the Debtor’s estate, as well as the Debtor’s formulation and consummation of a chapter 11 plan.

### **JURISDICTION AND VENUE**

19. This Court has jurisdiction to consider this Rule 2004 Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409. The statutory predicates underlying the relief requested in this Rule 2004 Motion are section 105(a) of the Bankruptcy Code and Bankruptcy Rules 2004 and 9016.

### **RELIEF REQUESTED**

20. By this Rule 2004 Motion, the Debtor respectfully requests that this Court enter an Order, under section 105(a) of the Bankruptcy Code and Bankruptcy Rules 2004 and 9016, authorizing and directing (i) production of documents by the Financial Institution in response to the Debtors' Document Requests, attached as Schedule A to the Subpoena; and/or (ii) testimony by the Financial Institution under Federal Rule 30(b)(6) about the matters for examination set forth in Schedule B to the Subpoena, and such additional examinations as may be warranted following the conclusion of the 30(b)(6) depositions.

21. The discovery requested in this Rule 2004 Motion will provide the Debtor with information it needs from the Financial Institution that has exclusive access to and possession of such information. The Debtor must obtain such information to properly investigate the Debtor's properties and financial affairs and to ascertain the existence of the bankruptcy estate's assets, liabilities, claims, and causes of action that may affect the administration of the Debtor's estate, as well as formulation and consummation of the Debtor's chapter 11 plan. Under Bankruptcy Rule 2004, the Debtor is entitled to seek and obtain discovery regarding the matters set forth herein. The Debtor believes that the document production and depositions requested will not be unduly burdensome and can be achieved without undue hardship in the time period requested.

### **ARGUMENT**

22. Bankruptcy Rule 2004(a) provides that "[o]n motion of any party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004(a). Discovery under Rule 2004 includes both document discovery and depositions. Fed. R. Bankr. P. 2004(c).

23. Bankruptcy Rule 2004 is the "basic discovery device used [in] bankruptcy cases." *In re French*, 145 B.R. 991, 992 (Bankr. D.S.D. 1992). The purpose of Bankruptcy Rule 2004 is to permit a broad investigation into the financial affairs of debtors and to assure the proper

administration of bankruptcy estates. *See Ernst & Young, LLP v. Pritchard (In re Daisytek, Inc.)*, 323 B.R. 180, 187 (N.D. Tex. 2005) (“[M]ore than a discovery device,” Bankruptcy Rule 2004 is a “procedural device that enables a party in interest to examine any entity to obtain information about the debtor’s financial condition, matters that may affect the administration of the debtor’s estate.”). The goal of the investigation is to reveal the nature and extent of the bankruptcy estate and for “discovering assets, examining transactions, and determining whether wrongdoing has occurred.” *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002); *see In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004); *In re Symington*, 209 B.R. 678, 683 (Bankr. D. Md. 1997) (citations omitted).

24. Bankruptcy Rule 2004(b) provides that the scope of the examination “may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.” Fed. R. Bankr. P. 2004(b). In addition, “the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.” *Id.*

25. There are two critical differences between discovery under Bankruptcy Rule 2004 and discovery under the Federal Rules of Civil Procedure. First, discovery under Bankruptcy Rule 2004 is an investigatory tool undertaken pre-litigation, that is, before the filing of a lawsuit or motion. In contrast, discovery under the Federal Rules of Civil Procedure occurs after a complaint has been filed. As such, a motion under Bankruptcy Rule 2004 need not be tied to specific factual allegations at issue between parties to a complaint or contested matter. *See In re*



*Symington*, 209 B.R. at 683. Bankruptcy Rule 2004 discovery is subject to fewer objections on grounds of relevance than discovery issued in connection with a contested matter or an adversary proceeding. *See id.*

26. Second, the scope of a Bankruptcy Rule 2004 examination is much broader than discovery under the Federal Rules of Civil Procedure. *See In re Kipp*, 86 B.R. 490, 491 (Bankr. W.D. Tex. 1988) (the scope of a Bankruptcy Rule 2004 examination is “virtually unlimited”); *In re Ecam Publ’ns Inc.*, 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991) (noting that the scope of Bankruptcy Rule 2004 questioning is extremely broad); *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991) (same). Indeed, courts have recognized that the scope of Bankruptcy Rule 2004 examinations is broad, unfettered, and can legitimately be in the nature of a “fishing expedition.” *In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 400 (Bankr. W.D. Pa. 2008); *In re Lev*, Case Nos. 05–35847, 06–2945, 2008 WL 207523, at \*3 (Bankr. D.N.J. Jan. 23, 2008) (unpublished); *In re Bakalis*, 199 B.R. 443, 447 (Bankr. E.D.N.Y. 1996); and *In re Valley Forge Plaza Assocs.*, 109 B.R. at 674.

27. “The purpose of Rule 2004 examination is ‘to show the condition of the estate and to enable the court to discover its extent and whereabouts and to come into possession of it so that the rights of creditors may be preserved.’” *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991) (citing *Cameron v. United States*, 231 U.S. 710, 717 (1914)). A Bankruptcy Rule 2004 examination is “designed to bring the Debtor’s affairs to light, not to hide them.” *In re PRS Ins. Group., Inc.*, 274 B.R. 381, 385 (Bankr. D. Del. 2001). Accordingly, Bankruptcy Rule 2004 discovery is appropriate to determine whether to initiate a cause of action. *See, In re Mirant Corp.*, 326 B.R. 354, 357 (Bankr. N.D. Tex. 2005) (“Discovery [under Rule 2004] now, not later, may be critical to ensure that no viable cause of action is lost.”).

28. Examinations under Bankruptcy Rules 2004(a) and (c) may include within their scope, among many other things: any matter which may relate to the property and assets of the estate; the financial condition of the debtor; any matter which may affect the administration of a debtor's estate; and, in a Chapter 11 case, any matter relevant to the case or to the formulation of a plan. *See* Fed. R. Bankr. P. 2004. The examination sought under this Rule 2004 Motion is well within the scope permitted by Bankruptcy Rule 2004.

29. Proceeding with discovery from the Financial Institution under Bankruptcy Rule 2004 is necessary to investigate the Debtor's properties and financial affairs, to obtain bank statements, copies of checks, deposit slips, wire and electronic fund transfers documentation and other information related to the Debtor's prepetition transfers and financial transactions, and to ascertain the existence of the bankruptcy estate's assets, liabilities, claims, and causes of action that the Debtor may pursue for the benefit of the bankruptcy estate and that may affect the administration of the Debtor's estate, as well as the Debtor's formulation and consummation of a chapter 11 plan. Accordingly, the Debtor respectfully requests that the Court authorize it to take such discovery under Bankruptcy Rule 2004 and to issue subpoenas under Bankruptcy Rule 9016.

#### **NOTICE**

30. Notice of this Rule 2004 Motion will be provided to (i) the Financial Institution; (ii) the Office of the United States Trustee for the Southern District of New York; and (iii) all parties that have requested or that are required to receive notice under Bankruptcy Rule 2002.

**CONCLUSION**

WHEREFORE, for the reasons set forth above, the Debtor respectfully requests that the Court grant its Rule 2004 Motion by entering the Order attached hereto as **Exhibit 1**; and grant such further relief as this Court deems appropriate.

Dated: June 14, 2016  
New York, New York

**ARENT FOX LLP**

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