

Jeremy S. Sussman
THE LAW OFFICES OF JEREMY S. SUSSMAN
225 Broadway, Suite 3800
New York, New York 10007
(646) 322-8373
sussman@sussman-legal.com

Counsel for Nikolaos Koklonis

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____	x	
In re:)	
)	Chapter 11
Airfasttickets, Inc.,)	
)	Case No. 15-11951 (SHL)
<i>Debtor.</i>)	
_____	x	

**NIKOLAOS KOKLONIS’S RESPONSE TO DEBTOR’S OBJECTION TO
PROOF OF CLAIM FILED BY NIKOLAOS KOKLONIS**

Nikolaos Koklonis (“Mr. Koklonis”), a creditor and equity interest holder in the above-captioned bankruptcy case (the “Bankruptcy Case”) of Airfasttickets, Inc. (the “Debtor”), by and through his undersigned counsel, hereby files this response (the “Response”) to the Debtor’s objection (docket no. 216, the “Claim Objection”) to the proof of claim filed by Mr. Koklonis (claim no. 80, the “Proof of Claim”), and in support thereof, respectfully submits the *Declaration of Nikolaos Koklonis* (the “Koklonis Declaration”) to be filed contemporaneously with this Response, and in further support thereof, respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Proof of Claim filed by Mr. Koklonis—a Greek citizen residing outside the United States with limited English writing skills—was prepared by Mr. Koklonis without the assistance of U.S. Bankruptcy Counsel, and thus is inartfully drafted. Nonetheless, the Proof of Claim, taken as a whole, as clarified by this Response and further supported by Koklonis Declaration and the documents attached thereto, is more than sufficient to establish *prima facie* evidence of claims asserted therein, and to overcome the Claim Objection in its entirety.

2. In the Proof of Claim, Mr. Koklonis asserts three types of claim: (i) a priority claim for unpaid salary and vacation pay earned within 180 days of the Petition Date; (ii) a general unsecured claim for unpaid fees due under a licensing agreement between Mr. Koklonis and the Debtor; and (iii) an ownership interest and/or secured claim with respect to property that was sold by the Debtor during the course of this Bankruptcy Case. Each of these claims should be allowed in full.

3. The Claim Objection fails to asset probative evidence rebutting any of the elements of the three components of the Proof of Claim. Accordingly, Mr. Koklonis respectfully submits that the Proof of Claim, if revised as outlined below, should be allowed in full.

RESPONSE

4. Pursuant to section 502(a) of the Bankruptcy Code, a “claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). A proof of claim filed in accordance with the Bankruptcy Rules “constitutes *prima facie* evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f). To overcome the *prima facie* validity of a proof of claim, an objecting party “must

produce evidence that would refute at least one of the allegations essential to the claim's legal sufficiency." *In re Allegheny Intern, Inc.*, 954 F.2d 173-74 (3d Cir. 1992).

I. Mr. Koklonis's Priority Claim for Unpaid Salary and Vacation Pay Should Be Allowed in the Maximum Amount

5. Pursuant to section 507(a)(4) of the Bankruptcy Code, unsecured claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual" within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first are entitled to priority, up to maximum of \$12,850. See 11 U.S.C. § 507(a)(4).

6. Here, a petition was filed against the Debtor on July 27, 2015 (the "Petition Date"). As explained in greater detail below and supported by the documents attached to the Koklonis Declaration, Mr. Koklonis holds valid unsecured claims for unpaid salary and vacation pay far in excess of the maximum amount of priority claim permitted by the Bankruptcy Code—all of which was earned well within 180 days of the Petition Date. Accordingly, Mr. Koklonis is entitled to a priority claim in maximum amount permitted under the Bankruptcy Code.

7. On October 1, 2012, Mr. Koklonis was hired by the Debtor as its President and Chief Executive Officer, pursuant to an employment letter dated September 20, 2012 (the "Employment Agreement"). Pursuant to the Employment Agreement, Mr. Koklonis was entitled to, among other things, an annual salary of \$250,000, to be paid semi-monthly rate of \$10,416.67 on the 15th and the last day of each month.

8. The employment of Mr. Koklonis was terminated by Adam Meislik, the Debtor's receiver (the "Receiver") on July 13, 2015, via a termination letter dated July 13, 2015 (the "Termination Letter")—two weeks prior to the Petition Date.

9. On information and belief, prior to terminating the employment of Mr. Koklonis, the Debtor intentionally failed to make the salary payments that were due to Mr. Koklonis for the month of June 2015. In addition, after the termination, the Debtor failed to pay the wages that were due to Mr. Koklonis for the period of July 1 through July 13, 2016. Accordingly, Mr. Koklonis has a general unsecured claim in the amount of approximately \$31,250.00 for unpaid salary earned within 180 days of the Petition Date.

10. In addition to salary, Mr. Koklonis was entitled under the Employment Agreement to twenty (20) vacation days per year. At the time his employment was terminated, Mr. Koklonis had twenty accrued but unused vacation days, for which he was not paid. Accordingly, Mr. Koklonis is entitled to approximately \$20,833.00 for unpaid vacation pay earned within 180 days of the Petition Date.

11. Because the aggregate amount of Mr. Koklonis's unsecured claim for unpaid wages and vacation pay earned within 180 days of the Petition Date—approximately \$52,083.00—far exceeds the maximum priority claim permitted under the Bankruptcy Code, Mr. Koklonis is entitled to the full statutory maximum priority claim.

12. Mr. Koklonis respectfully requests leave to revise his Proof of Claim to reduce his asserted priority claim to the statutory maximum, and to add the balance of his claim for unpaid salary and vacation pay to his general unsecured claim.

**II. Mr. Koklonis's General Unsecured Claim for License
Fees Should Be Allowed in Full**

13. Mr. Koklonis is the owner and/or holder of certain copyright and other intellectual property rights in (i) the software program under the name "AFT Booking Platform" including all upgrades with respect thereto (the "Platform"), and (ii) the domain "airfasttickets.com" (the "Domain").

14. On August 30, 2013, Mr. Koklonis and the Debtor entered into an intellectual property license agreement (the “License Agreement”) pursuant to which Mr. Koklonis granted the Debtors a license with respect to his intellectual property rights in the Platform and the Domain (the “Intellectual Property Rights”). Among other things, Mr. Koklonis granted the Debtor a non-exclusive, revocable, non-assignable right to use and upload the Program onto the Debtor’s servers, and a non-exclusive, revocable, non-assignable right to use, reproduce, transmit and publicly display the Program on the Domain.

15. Under the License Agreement, the Debtor agreed to pay Mr. Koklonis annula license fees equal to 3% of the total turnover of the Debtor per year (the “License Fees”).

16. From the date of the License Agreement through the Petition Date, the Debtor failed to pay the License Fees that were due and owing to Mr. Koklonis under the License Agreement.

17. Mr. Koklonis believes that, in light of the Debtors’ revenues from the date of the Licensing Agreement through the Petition Date, his general unsecured claim on account of the unpaid Licensing Fees is approximately \$18,000,000.00. Mr. Koklonis does not, however, have access to the financial information necessary to calculate that precise amount of unpaid Licensing Fees. That information is controlled by the Debtor.

18. Mr. Koklonis respectfully requests that he be granted an allowed unsecured claim in an amount equal to 3% of the annual total turnover of the Debtor for each year from the date of the License Agreement through the Petition Date.

III. Mr. Koklonis’s Ownership Interest and/or Secured Claim in Intellectual Property Should Be Allowed in Amount Determined by the Court

19. On or about October 26, 2015, the Debtor filed a *Motion (i) for Authorization to (a) Sell Substantially All of Its Property Free and Clear of All Liens, Claims,*

Encumbrances, and Other Interests and (b) Assume and Assign Contracts and (ii) for Approval of Procedures for Determining Cure Amounts (docket no. 27, the “Sale Motion”) seeking an order authorizing the private sale of intellectual property and software and certain related assets (the “Property”) to AirTourist, Inc. free and clear of all liens, claims, encumbrances for \$2.5 million (the “Sale Proceeds”). This sale (the “Sale”) was approved by the Court by order entered on November 24, 2015 (docket no. 65, the “Sale Order”) and, on information and belief, consummated shortly thereafter.

20. The Sale Order allowed the Property to be sold free and clear of “any and all liabilities, liens, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), interests and encumbrances against the Property” **but provides that** “such liabilities, liens, claims, interests and encumbrances, if any, to attach to the proceeds of the Sale with the same force, effect, and priority as such liabilities, liens, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), interests and encumbrances have on the Property.” Sale Order, ¶ 10. Accordingly, to the extent Mr. Koklonis held ownership, intellectual property or other interests in the Property, those interest now attached to the Sale Proceeds.

21. While Mr. Koklonis did not file opposition to the Sale, he did assert, in his Proof of Claim, ownership and/or intellectual property interests in many of the assets that constituted the Property that was sold by the Debtors. Accordingly, by his Proof of Claim, Mr. Koklonis asserted ownership interests and intellectual property rights and/or security interests which attach to the Sale Proceeds.

22. Mr. Koklonis respectfully request that he be granted allowed interests in the Sale Proceeds, in an amount determined by the Court to reflect the relative value of his

interests in the Property that was sold.

23. Mr. Koklonis further respectfully requests leave to revise his Proof of Claim to the extent, if any, necessary to fully reflect his assertion of ownership interests, intellectual property rights and/or security interests that have attached to the Sale Proceeds.

IV. Weiss Declaration Is Not Probative

24. Mr. Koklonis respectfully submits that the only evidence submitted by the Debtor in support of the Claim Objection—the declaration of Brian Weiss, a financial advisor retained by the Debtor (the “Weiss Declaration”)—is not probative, and is insufficient to overcome the *prima facie* evidence of the Proof of Claim.

25. First, while Mr. Weiss asserts that he “carefully reviewed the books and records of this Debtor” and “familiarized [himself] with the Debtor’s business and operations” (Declaration, ¶ 2), he failed to located easily obtainable information that is critical to the topics on which he is allegedly providing evidence.

26. For example, in connection with Mr. Koklonis’s priority claim for unpaid salary and vacation pay, Mr. Weiss apparently was unable to determine the period during which Mr. Koklonis was employed by the Debtor, or whether the Debtor failed to pay the asserted salary and vacation pay. Instead, Mr. Weiss acknowledges only that “there is some evidence the [Mr. Koklonis] was employed by the Debtor as some point” and asserts that he was unable to find evidence that Mr. Koklonis was not paid.

27. A conversation with the Receiver—the person controlling the Debtor during the relevant time period—would have uncovered the dates through which Mr. Koklonis remained employed and the fact (acknowledged by the Receiver in emails that are attached to the Koklonis Declaration) that the Debtor stopped paying Mr. Koklonis’ salary before his

employment was terminated.

28. Second, the Weiss declaration fails to provide any **affirmative evidence** that would rebut the *prima facie* validity of the Proof of Claim. For example, Mr. Koklonis asserts in the Proof of Claim that the Debtor failed to pay salary and vacation pay which he earned within the 180-day priority period. In response, Mr. Weiss asserts that he could not find evidence that Mr. Koklonis was not paid the asserted amounts. Significantly, however, Mr. Weiss also failed to find any evidence that Mr. Koklonis *was paid* during the relevant period. Such statements by Mr. Weiss are not probative nor evidence rebutting the *prima facie* validity of the proof of claim. Rather, they are an acknowledgement that the Debtor lacks evidence sufficient to rebut the Proof of Claim.

V. Mr. Koklonis's Offer to Withdraw "IPO Bonus" Claim

29. In the Proof of Claim, Mr. Koklonis asserts a claim in the amount of \$27,900,000.00 for the "IPO Bonus." Mr. Koklonis believes that the IPO Bonus was granted to him by the Debtor in exchange for his extensive efforts towards an IPO, and that this bonus was not conditioned on the IPO begin successful, and is a valid claim in the Bankruptcy Case. Moreover, Mr. Koklonis believes that the Debtor has allowed the "IPO Bonus" claims of other former employees of the Debtor.

30. Nonetheless, subject to the Debtor's consent to Mr. Koklonis being granted leave to revise his Proof of Claim as requested above, Mr. Koklonis hereby offers to further revise his Proof of Claim to strike and waive in its entirety his claim—in the amount of \$27,900,000.00—for the "IPO Bonus."

WHEREFORE, Mr. Koklonis respectfully requests that the Court enter an order
(i) allowing his Proof of Claim, revised as outlined herein, in full, (ii) sustaining the Response,
(ii) denying the Claim Objection, and (iv) granting Mr. Koklonis such other relief as is just.

Dated: New York, New York
October 6, 2016

THE LAW OFFICES OF JEREMY S. SUSSMAN

/s/ Jeremy S. Sussman
Jeremy S. Sussman
225 Broadway, Suite 3800
New York, New York 10007
(646) 322-8373
sussman@sussman-legal.com

Counsel for Nikoloas Koklonis