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February 28, 2020

BY ECF

Honorable Sean H. Lane
United States Bankruptcy Judge
U.S. Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

Re: In re Airfasttickets, Inc., Case No. 15-11951 (SHL)
General Unsecured Creditor's Proposal for Case Resolution and Closure

Dear Judge Lane:

Our firm is counsel to Pioneer Funding Group, LLC and its affiliated funds ("Pioneer"), which by way of various assignments of claims¹, is the second largest unsecured creditor in the Chapter 11 case of *Airfasttickets, Inc.*, the above-referenced debtor (the "Debtor"). As this Court is well aware, the final administration of this case and the distribution to creditors from the Liquidating Trust has been stalled for over three years pending the resolution of complicated issues concerning the claim asserted by Fareportal, Inc. ("Fareportal"). Indeed, these matters were raised to the Court in a letter dated December 11, 2019 from the joint liquidators of Air Fast Tickets Limited, the largest unsecured creditor and beneficiary of the Liquidating Trust [Docket No. 401], and since that time there has been some progress in attempting to determine any legitimacy of Fareportal's claim.

The purpose of this letter is to (i) highlight for the Court the economic limitations of the Liquidating Trust and the real dollar amount at issue, (ii) express Pioneer's concern that the cost of continuing to administer the Liquidating Trust and liquidate the Fareportal claim will certainly delay and could materially reduce ultimate distributions to \$62.5 million of undisputed claims, and (iii) propose the employment of established mechanisms in the Code which are used routinely to remedy this inequitable result.

¹ See Docket Nos. 395-396, 403-405, and 407-415.

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I. The Economic Reality – There is a Maximum of \$400,000 at Issue Here

Fareportal asserted against the Liquidating Trust a general unsecured claim (Proof of Claim No. 86; the “Fareportal Claim”) in the amount of “not less than \$10,000,000.00.” We assume for purposes of this letter that \$10 million is actually a maximum as opposed to a minimum. As the Court is well aware, the Fareportal Claim was late filed and has been objected to by the Liquidating Trustee [Docket No. 280].

Further, while not necessarily determinative of the amount of damages that Fareportal may allege to have suffered, it is important to note that all of the Liquidating Trust’s assets, including the code at issue, was sold for \$2.5 million in or around November 2015. The sale was expressly found by this Court to have been sold for the “highest and best value for the [p]roperty for the [d]ebtor and its estate, and [that] any other transaction would not have yielded as favorable an economic result.” See Sale Order, Docket No. 65, p.4, ¶G. It is hard to conceive how Fareportal could have damages that surpass the fair market value of the property that it alleges was stolen.

Using rough estimates, there are approximately \$62.5 million in valid and allowed claims against the Liquidating Trust, which has only around \$3 million in assets, or \$2.9 million after deducting the commissions that would be earned by the Liquidating Trustee in connection with the distribution. Assuming no further expenditures by the Liquidating Trust, creditors will only receive an approximate 4.6% distribution if the Fareportal Claim is disallowed, and an approximate 4% distribution if it is allowed in full at \$10 million. Thus, the actual amount at issue is only around \$400,000, or what Fareportal could receive if its claim were allowed in full. Further, if you accept the logical premise that the Fareportal claim could not possibly be for more than the fair market value of the debtor’s assets of \$2.5 million, which assets include the code that Fareportal alleges was stolen, then there is really only around \$115,000 at issue.

II. The Cost of Liquidating the Fareportal Claim is Significant

Counsel to the Liquidating Trust was paid approximately \$164,000 (5% of the Liquidating Trust’s remaining assets) in December 2019 for only a few months of work, largely for handling matters regarding the Fareportal Claim. As resolved at a conference before this Court, the Liquidating Trust has now filed a motion for approval of an order establishing procedures for the exchange of information and review of intellectual property, software and related assets of Travana, Inc. and Fareportal on a confidential basis in connection with the contest over the Fareportal Claim [Docket No. 417].

If this continues, the Liquidating Trust and Fareportal will engage in a costly and time-consuming mining and analysis of code and data in order to test the legitimacy and proper amount of the Fareportal Claim. The results will then have to be reviewed by coding experts who may very likely disagree over whether any similarities in the code could be explained only by copying of Fareportal’s code, and not by coincidence, independent creation, or the existence

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of a prior common source. Of course, there may be other factual and legal issues with respect to the claim. Following that, assuming the parties agreed, or a finder of fact found, that Fareportal's code was in fact inappropriately taken and that the debtor had potential liability for that taking, there would be a significant dispute regarding whether and to what extent Fareportal was actually damaged by the taking which, again, would likely require the use of expensive experts on both sides to prove.

There is little question given the complexity of this type of dispute that the costs of the litigation, even at the initial discovery phases, will likely dwarf the actual dollar amount at issue. The costs of these delays and activities by the Liquidating Trust will necessarily be entirely born by the undisputed beneficiaries of the Liquidating Trust, like Air Fast Tickets Limited and Pioneer.

It is extraordinarily expensive to keep the Liquidating Trust open with costs including: (i) \$3,000 per month, or \$36,000 per year to the members of the Liquidation Trust advisory board; (ii) approximately \$45,000 in lost interest per year (calculated conservatively at the 1-year treasury yield) as the trust corpus is in a non-interest bearing account; and (iii) the costs associated with mandatory reporting, filing tax returns and other incidental expenses to remaining in existence. When the cost to continue to litigate the Fareportal Claim are considered, it is conceivable that a significant portion of the modest amount of cash left could be squandered litigating a claim that may ultimately be disallowed in full, leaving \$62.5 million of legitimate undisputed creditors holding the bag with no recourse.

This matter is ripe for compromise just on economic factors alone.

III. Proposals for Resolving the Claim Issues Quickly and Amicably

Once the maximum economic amount at issue is put into perspective, there are a number of potential ways to resolve this issue or at least make an appropriate reservation and distribution to undisputed claimants now.

First, the matter could be referred to mediation in the hopes that an impartial mediator could facilitate an open dialogue which could bring the parties together sufficiently to get a consensual resolution.

Second, the Fareportal Claim could be estimated pursuant to 11 U.S.C. § 502(c)(1), under the Court's broad power to estimate "any contingent or unliquidated claim" when the full litigation of that claim "would unduly delay the administration of the case".

Third, even if the parties cannot resolve the matter fully, there is no reason to delay the distribution of the entire approximately \$3 million corpus of the Liquidating Trust to those holding \$62.5 million of undisputed claims while the parties engage in litigation over a matter that has, at best, \$400,000 at issue. Clearly, there is no reason that the majority of the

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Liquidating Trust assets cannot be distributed to undisputed claimants now. Estimating disputed claims so distributions to allowed creditors can commence is commonplace when the ultimate liquidation of a claim would require protracted litigation.

The only question with respect to the foregoing is whether some minimal gating discovery is required prior to implementing a means of rapid resolution. Even if some discovery is determined to be needed, Pioneer requests that these options be explored and discussed at the Court conference currently scheduled for March 3, 2020, so that a clear pathway can be established for the final resolution of these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Fred Stevens", with a stylized, sweeping flourish at the end.

Fred Stevens

FS:moh

cc (by e-mail):

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