

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

APPLICATION FOR AN ORDER APPOINTING BMC GROUP, INC.
AS CLAIMS AND NOTICING AGENT FOR THE DEBTOR
PURSUANT TO 28 U.S.C. § 156(c), 11 U.S.C. § 105(a), S.D.N.Y.
LBR 5075-1 AND GENERAL ORDER M-409

The debtor and debtor in possession in the above-captioned case (the “Debtor”) hereby moves for entry of an order, substantially in the form of Exhibit C hereto (the “Retention Order”) pursuant to section 156(c) of title 28 of the United States Code and section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), appointing BMC Group, Inc. as claims and noticing agent (“Claims and Noticing Agent”) in the Debtor’s chapter 11 case (the “Section 156(c) Application”). In support of the Section 156(c) Application, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2 On July 21, 2015, the Delaware Court of Chancery appointed Adam Meislik as the receiver of the Debtor.

3. On July 27, 2015, an involuntary petition (the “Involuntary Petition”) under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) was filed against the Debtor.

4. The Debtor and the petitioning creditors entered into a stipulation extending the deadline to answer the Involuntary Petition, which stipulation was approved by this Court on or about August 21, 2015, extending the deadline through and including September 21, 2015 for the Debtor to file an answer.

5. On September 21, 2015, the Debtor filed an answer consenting to the entry of an order for relief under the Bankruptcy Code (the “Answer”) and concurrently filed a motion to convert the case to one under chapter 11 of the Bankruptcy Code.

6. The Order for Relief commencing the chapter 7 case was October 27, 2015 (the “Relief Date”), and the motion to convert to chapter 11 was granted by the Court on October 28, 2015 (the “Conversion Date”). A chapter 7 trustee was not appointed during the gap period.

7. The Debtor is managing its affairs as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the filing of this Application, no trustee, examiner or committee has been appointed.

8. Additional background facts surrounding the commencement of this Chapter 11 case is more fully described in the Debtor’s *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* [Dkt No. 27].

RELIEF REQUESTED

9. This Section 156(c) Application is made pursuant to 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code, S.D.N.Y. LBR 5075-1 and General Order M-409 for an order appointing Claims and Noticing Agent to act as the claims and noticing agent in order to assume full responsibility for the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Debtor's chapter 11 case. The Debtor's selection of Claims and Noticing Agent to act as the claims and noticing agent has satisfied the Court's *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, in that the Debtor has obtained and reviewed engagement proposals from at least two (2) other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtor submits, based on all engagement proposals obtained and reviewed, that Claims and Noticing Agent's rates are competitive and reasonable given Claims and Noticing Agent's quality of services and expertise. The terms of retention are set forth in the Engagement Agreement annexed hereto as Exhibit A (the "Engagement Agreement"); provided, however, that Claims and Noticing Agent is seeking approval solely of the terms and provisions as set forth in this Application and the proposed order attached hereto.

10. Although the Debtor has not yet filed its schedules of assets and liabilities, it anticipates that there will be an extensive list of entities to be noticed. In view of the number of anticipated claimants and the complexity of the Debtor's business, the Debtor submits that the appointment of a claims and noticing agent is both necessary and in the best interests of both the Debtor's estate and its creditors.

11. Claims and Noticing Agent has acted as the claims and noticing agent in numerous cases of comparable size, including several cases currently pending in the United States

Bankruptcy Court for this District. . *See, e.g., In re St. Francis Hospital et al*, Case No. 13-37725 (Bankr. S.D.N.Y. Dec. 20, 2013); *In re Marco Polo Seatrade B.V., et al.*, Case No. 11-13634 (Bankr. S.D.N.Y. July 29, 2011); *In re MSR Resort Golf Course LLC, et al.*, Case No. 11-10372 (Bankr. S.D.N.Y. February 1, 2011); *In re The Great Atlantic & Pacific Tea Company, Inc.*, Case No. 10-24549 (Bankr. S.D.N.Y. 2010); *In re Vertis Holdings, Inc.*, Case No. 10-16170 (Bankr. S.D.N.Y. November 17, 2010); *In re American Media, Inc.*, Case No. 10-16140 (Bankr. S.D.N.Y. November 17, 2010); *In re Loehmann's Holdings, Inc.*, Case No. 10-16077 (Bankr. S.D.N.Y. November 15, 2010).¹

12. By appointing Claims and Noticing Agent as the claims and noticing agent in this chapter 11 case, the distribution of notices and the processing of claims will be expedited, and the clerk's office will be relieved of the administrative burden of processing what may be an overwhelming number of claims. In support of this Section 156(c) Application, the Debtor submits the Claims and Noticing Agent's affidavit attached hereto as Exhibit B (the "Claims and Noticing Agent Affidavit").

13. This Section 156(c) Application pertains only to the work to be performed by Claims and Noticing Agent under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and S.D.N.Y. LBR 5075-1, and any work to be performed by Claims and Noticing Agent outside of this scope is not covered by this Section 156(c) Application or by any Order granting approval hereof. Specifically, Claims and Noticing Agent will perform the following tasks in its role as claims and noticing agent (the "Claims and Noticing Services"), as well as all quality control relating thereto:

- (a) Prepare and serve required notices and documents in the chapter 11 case in

¹ Because of the voluminous nature of the orders cited herein, they are not attached to the Section 156(c)

accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") in the form and manner directed by the Debtor and/or the Court, including (i) notice of the commencement of the chapter 11 cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtor's plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the Debtor or Court may deem necessary or appropriate for an orderly administration of the chapter 11 case.

- (b) Maintain an official copy of the Debtor's schedules of assets and liabilities and statement of financial affairs (collectively, "Schedules"), listing the Debtor's known creditors and the amounts owed thereto;
- (c) Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest; and (ii) a "core" mailing list consisting of all parties described in sections 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and make said lists available upon request by a party-in-interest or the Clerk;

- (d) Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) For *all* notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- (g) Process all proofs of claim received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- (h) Maintain the official claims register for the Debtor (the "Claims Registers") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed:

- (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor, and (vii) any disposition of the claim;
- (i) Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (j) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (k) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Claims and Noticing Agent, not less than weekly;
- (l) Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the claims register for the Clerk's review (upon the Clerk's request);
- (m) Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register;
- (n) Assist in the dissemination of information to the public and respond to requests for administrative information regarding the case as directed by the Debtor or the Court, including through the use of a case website and/or call center.
- (o) If the case is converted to chapter 7, contact the Clerk's Office within three (3) days of the notice to Claims and Noticing Agent of entry of the

order converting the case;

- (p) Thirty (30) days prior to the close of these cases, to the extent practicable, request that the Debtor submit to the Court a proposed Order dismissing the Claims and Noticing Agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these cases;
- (q) Within seven (7) days of notice to Claims and Noticing Agent of entry of an order closing the chapter 11 case, provide to the Court the final version of the claims register as of the date immediately before the close of the chapter 11 case; and
- (r) At the close of this case, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, MO 64064 or (ii) any other location requested by the Clerk's Office.

14. The Claims Registers shall be opened to the public for examination without charge during regular business hours and on a case-specific website maintained by Claims and Noticing Agent.

15. Claims and Noticing Agent shall not employ any past or present employee of the Debtor for work that involves the Debtor's bankruptcy cases.

16. The Debtor respectfully requests that the undisputed fees and expenses incurred by Claims and Noticing Agent in the performance of the above services be treated as administrative expenses of the Debtor's chapter 11 estate pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A) and be paid in the ordinary course of business without further application to or

order of the Court. Claims and Noticing Agent agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtor, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee, if any, monitoring the expenses of the Debtor and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

17. Prior to the Conversion Date, the Debtors provided Claims and Noticing Agent a retainer in the amount of \$10,000.00. Claims and Noticing Agent seeks to first apply the retainer to all pre-conversion invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Engagement Agreement during the chapter 11 case as security for the payment of fees and expenses incurred under the Engagement Agreement.

18. In connection with its retention as claims and noticing agent, Claims and Noticing Agent represents in the Claims and Noticing Agent Affidavit, among other things, that:

- (a) Claims and Noticing Agent will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the claims and noticing agent in the Chapter 11 Case;
- (b) By accepting employment in the Chapter 11 Case, Claims and Noticing Agent waives any rights to receive compensation from the United States government in connection with the Debtor's chapter 11 case;

- (c) In its capacity as the claims and noticing agent in the Chapter 11 Case, Claims and Noticing Agent will not be an agent of the United States and will not act on behalf of the United States; and
- (d) It is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged.

19. To the extent that there is any inconsistency between this Application, the Retention Order and the Engagement Agreement, the Retention Order shall govern.

20. This Section 156(c) Application complies with the *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)* and conforms to the standard Section 156(c) Application in use in this Court. The Debtor has provided copies of this Section 156(c) Application to the Clerk of Court and to (a) the United States Trustee; (b) the Debtor’s twenty (20) largest unsecured creditors; (c) counsel to the proposed purchaser; (d) counsel to Nikolaos Koklonis, the Debtor’s majority stockholder; (e) counsel to the petitioning creditors; and (f) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 and submits that no further notice is necessary under the circumstances.

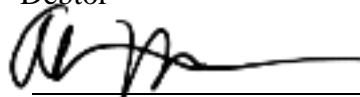
WHEREFORE, the Debtor requests entry of an order, in the form annexed hereto as Exhibit C, authorizing BMC GROUP, INC. to act as claims and noticing agent for the maintenance and processing of claims and the distribution of notices.

Dated: November 13, 2015

AirFastTickets Inc.

Debtor

By:



Adam Meislik

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