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Objection Deadline: November 24, 2015 at 5:00 p.m.

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*Proposed General Bankruptcy and
Restructuring Counsel to the Debtor*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR RETAINED PROFESSIONALS**

AirFastTickets, Inc., a Delaware corporation, the above-captioned debtor and debtor in possession (the “Debtor”), through its undersigned counsel, hereby files this motion (the “Motion”) for entry of an order establishing procedures for interim compensation and reimbursement of expenses for professionals retained by the estate, sections 105(a) and 331 of

the Bankruptcy Code, Bankruptcy Rule 2016, Local Rule 2016-1 and standing General Order M-412, *Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals* (Bankr. S.D.N.Y. Dec. 21, 2010) (“General Order M-412”), and respectfully represents as follows:

RELIEF REQUESTED

1. By this Motion, the Debtor seeks entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), (a) approving the Compensation Procedures (as defined herein) for an orderly, regular process for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals whose retentions are approved by the Court pursuant to sections 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code and (b) granting related relief.

JURISDICTION

2. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a) and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, Local Rule 2016-1 and standing General Order M-412, *Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals* (Bankr. S.D.N.Y. Dec. 21, 2010) (“General Order M-412”).

BACKGROUND

4. On July 28, 2015, certain of the Debtor’s creditors (the “Petitioning Creditors”) filed an involuntary petition against AirFastTickets, Inc. seeking an order for relief under chapter

7 of the Bankruptcy Code. Pursuant to the summons issued in conjunction with the involuntary petition, the Debtor had until August 21, 2015 to respond to the involuntary petition.

5. On August 20, 2015, the Petitioning Creditors filed a stipulation with the Court extending the Debtor's time to respond to the involuntary petition, through and including September 21, 2015.

6. On September 21, 2015, in lieu of resisting the involuntary petition, the Debtor consented to the entry of the order for relief and filed its *Motion to Convert Chapter 7 Case to Chapter 11 Pursuant to 11 U.S.C. § 706(a)* [Docket No. 10] seeking to convert its case to one under chapter 11 of the Bankruptcy Code.

7. On October 26, 2015, the Debtor filed a motion seeking to sell substantially all of its assets free and clear of liens claims and encumbrances, to assume and assign certain contracts, and to approve procedures for determining cure amounts [Docket No. 27].

8. On October 27, 2015 (the "Conversion Date"), the Court entered an order converting the Debtor's case to chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"), which included an Order for Relief.

9. No trustee or examiner has been requested in the Chapter 11 Case and no committees have been appointed.

RETENTION OF PROFESSIONALS

10. The Debtor has filed or will file applications to retain the following professionals (collectively, the "Professionals"): (a) Arent Fox LLP, as restructuring counsel; (b) Richards, Layton and Finger, P.A., as special counsel; (c) BSW & Associates, as financial advisor; and (d) BMC Group, Inc., as claims and noticing agent. The Debtor may also seek to retain other professionals pursuant to section 327 of the Bankruptcy Code during the course of these chapter 11 cases, as needed.

11. The Debtor believes that establishing orderly procedures for payment of the Professionals will streamline the administration of these chapter 11 cases and otherwise promote efficiency for the Court, the United States Trustee, and all parties in interest. Specifically, a streamlined process for serving interim and final fee applications (each, an “Application”), and the notices thereof, is in the best interests of the Debtor because it will facilitate efficient review of the Professionals’ fees and expenses while saving the Debtor’s estate unnecessary administrative expenses.

THE COMPENSATION PROCEDURES

12. Pursuant to section 331 of the Bankruptcy Code, the Professionals are entitled to submit Applications for interim compensation and reimbursement of expenses every 120 days, or more often if the Court permits. *See* 11 U.S.C. § 331. In addition, section 105(a) of the Bankruptcy Code authorizes the Court to issue any order “necessary or appropriate to carry out the provisions of [the Bankruptcy Code],” thereby codifying the Court’s inherent equitable powers. *See* 11 U.S.C. § 105(a).

13. The Debtor proposes the following procedures to govern the payment of compensation and reimbursement of expenses of Professionals in accordance with General Order M-412 (the “Compensation Procedures”):

- a. On or before the 30th day of each month following the month for which compensation is sought, each Professional seeking compensation will serve a monthly statement (a “Monthly Fee Statement”), by hand, overnight delivery, or, if agreed to by the respective Notice Party (as defined herein), by e-mail to an e-mail address designated by that Notice Party, on: (i) the Debtor, c/o GlassRatner Advisory & Capital Group LLC, 19800 MacArthur Boulevard, Suite 820, Irvine, California 92612, Attn: Adam Meislik, (ii) proposed counsel to the Debtor, Arent Fox LLP, Gas Company Tower, 555 West Fifth Street, 48th Floor, Los Angeles, California 90013, Attn: Aram Ordubegian, Esq.; and (iii) the Office of the United States Trustee for the Southern District of New York, U. S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Andrea B. Schwartz, Esq. (each, a “Notice Party,” and collectively, the “Notice Parties”);

- b. On or before the 30th day of each month following the month for which compensation is sought, each Professional seeking compensation shall file a Monthly Fee Statement with the Court; however, a courtesy copy need not be delivered to the presiding judge's chambers; *provided* that filing a Monthly Fee Statement with the Court does not alter the requirements outlined in sections 330 and 331 of the Bankruptcy Code. The Professionals still are required to serve and file fee applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and other applicable laws in this district;
- c. Each Monthly Fee Statement must contain a list of the individuals and their respective titles (e.g., attorney, accountant, or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the expenses incurred (no Professional should seek reimbursement of an expense that would otherwise not be allowed pursuant to the Court's Administrative Orders or the *U.S. Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330*, dated January 30, 1996), and contemporaneously maintained time entries for each individual in increments of tenths (1 / 10) of an hour;
- d. If any Notice Party has an objection to the compensation or reimbursement sought in the Monthly Fee Statement, such Notice Party shall, by no later than the 35th day following the last day of the month for which compensation is sought (the "Objection Deadline"), serve upon such Professional, and the other Notice Parties, a written "Notice of Objection to Fee Statement" setting forth the nature of the objection and the amount of fees or expenses at issue;
- e. At the expiration of the Objection Deadline, the Debtor shall promptly pay (i) 80 percent of the Professional's fees and (ii) 100 percent of the undisputed expenses identified in each Monthly Fee Statement to which no objection has been served in accordance with subparagraph (d);¹
- f. If the Debtor receives a Notice of Objection to Fee Statement, they shall withhold payment of that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and expenses in the percentages set forth in subparagraph (e) unless the Professional whose statement is objected to seeks an order from the Court, upon notice and a hearing, directing payment to be made;
- g. Similarly, if the parties to an objection are able to resolve their dispute following the service of a Notice of Objection to Fee Statement and if the

¹ The remaining 20 percent of the Professional's fees for each Monthly Fee Statement shall be withheld from payment until further order of the Court (the "Monthly Fee Holdback").

Professional whose Monthly Fee Statement was objected to serves on all of the parties listed in subparagraph (a) a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtor shall promptly pay, in accordance with subparagraph (e), that portion of the Monthly Fee Statement which is no longer subject to an objection;

- h. All objections that are not resolved shall be preserved and presented to the Court at the next interim or final fee application hearing held by the Court;
- i. The service of a Notice of Objection to Fee Statement in accordance with subparagraph (d) shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Fee Statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code;
- j. Approximately every 120 days, but no more than every 150 days (the "Interim Fee Period"), each of the Professionals shall serve and file with the Court an application (an "Interim Fee Application") for interim or final Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested. Furthermore, upon allowance by the Court of a Professional's fee application, the Debtor shall be authorized to promptly pay such Professional all requested fees (including the Monthly Fee Holdback) and expenses not previously paid. Each Retained Professional shall file its Interim Fee Application no later than forty-five (45) days after the end of the Interim Fee Period;
- k. The Debtor's attorneys shall obtain a date from the Court for the hearing to consider Interim Fee Applications for all Retained Professionals (the "Interim Fee Hearing"). At least twenty-one (21) days prior to the Interim Fee Hearing, the Debtor's attorneys shall file a notice with the Court, with service upon the U.S. Trustee and all Professionals, setting forth the time, date, and location of the Interim Fee Hearing, the period covered by the Interim Fee Applications, and the Objection Deadline. Any Professional unable to file its own Interim Fee Application with the Court shall deliver to the Debtor's attorneys a fully executed copy with original signatures, along with service copies, of such Interim Fee Application, three (3) business days before the filing deadline. The Debtor's attorneys shall file and serve such Interim Fee Application with the Court;
- l. Any Professional who fails to file an Interim Fee Application seeking approval of compensation and expenses previously paid pursuant to a Monthly Fee Statement when such Interim Fee Application is due shall (i) be ineligible

to receive further monthly payments of fees or expenses as provided herein until further order of the Court and (ii) may be required to disgorge any fees paid since retention or the last fee application, whichever is later;

- m. The pendency of any Interim Fee Application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court; and
- n. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement of expenses, as provided herein, shall have any effect on the Court's interim or final allowance of compensation and reimbursement of expenses of any Professional.

14. The Debtor further requests that the Court limit service of Applications to the Notice Parties. The Debtor further requests that all other parties that file a notice of appearance with the clerk of the Court and request notice of pleadings in these chapter 11 cases be entitled to receive only notice of hearings on the Applications (the "Hearing Notices"), with a right to receive copies of the Applications upon request. Because the Applications are anticipated to be voluminous, the Debtor submits that serving the Applications and the Hearing Notices in this manner will permit the parties most active in these chapter 11 cases to review and object to the payment of fees and reimbursement of expenses efficiently and will save unnecessary duplication and mailing expenses.

BASIS FOR RELIEF

15. Pursuant to section 331 of the Bankruptcy Code, all professionals are entitled to submit applications for interim compensation and reimbursement of expenses every 120 days, or more often if the bankruptcy court permits. *See* 11 U.S.C. § 331. In addition, section 105(a) of the Bankruptcy Code authorizes the Court to issue any order "necessary or appropriate to carry out the provisions of [the Bankruptcy Code]," thereby codifying the Court's inherent equitable powers. *See* 11 U.S.C. § 105(a).

16. Factors generally considered by courts in determining whether more frequent payment of fees and expenses is warranted include “the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys for the debtors in providing services necessary to achieve a successful reorganization of the debtors.” *In re Int’l Horizons, Inc.*, 10 B.R. 895, 897–98 (Bankr. N.D. Ga. 1981). In considering these factors, courts have determined that interim compensation procedures are appropriate to avoid having professionals fund a debtor’s reorganization proceedings. *Id.*

17. The complexity of this chapter 11 case and the amount of time and effort that will be required from the Professionals to sell the debtor’s assets and attempt to formulate a plan thereafter to reorganize the Debtor’s businesses, or otherwise wind down the Debtor’s estate justifies the Compensation Procedures requested herein. Indeed, such Compensation Procedures are necessary to ensure that the Professionals are fairly and timely compensated for their services in these cases, and are not forced to bear undue financial burden or risk caused by delays in payment.

18. Courts in this jurisdiction have approved relief similar to the relief requested in this Motion and as set forth in the Order. *See, e.g., In re Chassix Holdings, Inc.*, No. 15-10578 (MEW) (Bankr. S.D.N.Y. Apr. 14, 2015); *In re NII Holdings, Inc.*, No. 14-12611 (SCC) (Bankr. S.D.N.Y. Oct. 14, 2014); *In re Eagle Bulk Shipping Inc.*, No. 14-12303 (SHL) (Bankr. S.D.N.Y. Sept. 19, 2014); *In re Genco Shipping & Trading Ltd.*, No. 14-11108 (SHL) (Bankr. S.D.N.Y. May 16, 2014); *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB) (Bankr. S.D.N.Y. May 30, 2012).²

19. The Debtor believes that the Compensation Procedures will enable them and other parties in interest to closely monitor case administration costs and implement efficient cash

² Because of the voluminous nature of the orders cited herein, they are not attached to this Motion. Copies of these orders are available upon request of the Debtor’s proposed counsel.

management procedures. Moreover, the Compensation Procedures will allow the Court and parties in interest to ensure the reasonableness and necessity of the compensation and reimbursement of expenses sought by Professionals.

20. The Debtor submits that implementing the Compensation Procedures will significantly aid in the efficient administration of these chapter 11 cases. The Debtor further submits that the Compensation Procedures comply with the guidelines promulgated by the Court pursuant to Local Bankruptcy Rule 2016-1 and General Order M-412. Accordingly, the relief requested herein is in the best interests of the Debtor, its estate, creditors, and all other parties in interest, and therefore should be approved.

RESERVATION OF RIGHTS

21. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtor expressly reserves its right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

NOTICE

22. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the Debtor's twenty (20) largest unsecured creditors; (c) counsel to the proposed purchaser; (d) Nikolaos Koklonis, the Debtor's majority stockholder; (e) counsel to the petitioning creditors, Duane Morris LLP, 1540 Broadway, New York, New York 10036, Attn: William C. Hauer and Goulston & Storrs, 400 Atlantic Avenue,

Boston, Massachusetts 02110, Attn: Douglas B. Rosner; and (f) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. The Debtor submits that no other or further notice is necessary.

NO PRIOR REQUEST

23. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: November 13, 2015
New York, New York

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