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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. | ) ) ) ) | Re: Docket No. 54 |

**DEBTOR'S REPLY TO OBJECTION OF NEW
MEDIA AND GOODWIN TO DEBTOR'S SALE MOTION**

AirFastTickets, Inc., a Delaware corporation (the "**Debtor**"), by and through its

undersigned counsel, hereby replies to the objection [Docket No. 54] (the "**Objection**") filed by

Panos Kordonouris & Associates E.E. a/k/a New Media Concept Limited Partnership ("**New

Media**") and Goodwin Solutions GmbH ("**Goodwin**") to the Debtor's motion to sell (the "**Sale**")

substantially all of its property [Docket No. 27] (the "**Sale Motion**").  In support of this reply,

the Debtor relies on the Declaration of Sevket Seyalioglu (the "**Seyalioglu Declaration**") filed contemporaneously herewith and respectfully states as follows:

## BACKGROUND

1.      As is set forth in greater detail in the Sale Motion, the Debtor used proprietary software that it developed and owns to help consumers find low cost domestic and international airfares.  In that regard, the Debtor's model was similar to the airline ticketing services provided by Expedia.com and other online travel agencies.

2.      From May 2013 until September 2014,  pursuant to an agreement (the "**License Agreement**") with New Media,[1] the Debtor contracted to use New Media's software system for on-line booking and payment of hotel rooms and air travel (the "**New Media Booking System**").  In or around September 2014, the Debtor completed its development of its own software system for on-line booking (the "**Debtor Booking System**") and significantly reduced its usage of the New Media Booking System for airfare ticket purchases and stopped using it altogether in or around October 2014.[2]  *See* Seyalioglu Declaration ¶ 3.  The Debtor Booking System is based on a Windows architecture and C# source code.  New Media's Booking System is based on a Linux architecture and Java source code — a completely different technology than the Debtor Booking System.  *See id*.

3.      In addition, when it was in use, the Debtor hosted the New Media Booking System on its Amazon Web Services ("**AWS**") infrastructure. *See id*. at ¶ 4.  AWS is a platform service that has the ability to host several different servers.  The Debtor never had the ability to access the source code of the New Media Booking System. *See id*.  Because the company had

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[1]      The License Agreement was later transferred by New Media to Goodwin Solutions.

[2]      From September to October 2014, the Debtor continued to use the New Media Booking System for hotel bookings.  However, the usage was minimal.

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not operated for months, Mr. Meislik as receiver caused the Debtor to shut down the AWS infrastructure and delete the servers off the AWS infrastructure. Accordingly, the AWS infrastructure no longer contains the New Media Booking System.[3] *See id*. at ¶ 5.

4.    As indicated above, the Debtor stopped using the License Agreement and related New Media Booking System over a year ago -- in September 2014. The Debtor is seeking to sell its own Booking System and related source code, which it developed, as part of the Sale; the Debtor is not seeking to assume and assign the License Agreement or sell the source code owned by New Media. The Debtor has not used any source code from the New Media Booking System in the Debtor Booking Systems. *See id*. at ¶ 3.

## REPLY

5.    In the Objection, New Media states that it (i) believes (without any supporting evidence) that the Debtor has decompiled, reverse-engineered, disassembled or otherwise attempted to reconstruct the New Media Booking System and that by doing so has obtained the full source code for the New Media Booking System, (ii) believes the Debtor intends to include the source code for the New Media Booking System as part of the Sale, and (iii) is concerned that the Debtor is seeking to assume and assign the License Agreement to the Purchaser pursuant to the Sale. None of these contentions is correct.

6.    First, as New Media correctly acknowledged in the Objection, the Debtor is not seeking to assume and assign the License Agreement as part of the Sale. Lest there be any doubt, the License Agreement is not listed on Exhibit B to the Purchase Agreement which includes all Assumed Contracts. In fact, the Debtor is seeking to assign relatively few agreements in connection with the Sale, none of which appear to be executory. Thus, the Debtor

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[3]    The Debtor has an image back-up of the New Media Booking System. The Debtor does not have access to the source code through the image back-up and does not have the New Media source code. Further, the Debtor does

is not seeking to assume and assign the License Agreement pursuant to the Sale and is not purporting to do so.

7.      Second, the Debtor does not have possession of or access to the source code for the New Media Booking System and is not intending to sell such source code to the Purchaser in connection with the Sale.  As set forth above, the Debtor's usage of the New Media Booking System was significantly reduced in or around September 2014 for airfare purchases and stopped using it altogether in or around October 2014.  At that time, the Debtor had completed its development of its own Booking System - based on completely different source code than that of the New Media Booking System, written in a different language on a different platform.  The Debtor did not use New Media's source code to develop the Debtor Booking System.  Accordingly, the sale of the Debtor Booking System will not result in the Sale of New Media's source code.

8.      In fact, the Debtor did not have the capability to access New Media's source code in any supposed effort to reverse engineer it.  At all times during its use, the New Media Booking System was hosted on the AWS infrastructure.  The AWS infrastructure did not allow the Debtor to access the source code of the AWS hosted servers.[4]  *See id*. at ¶ 4.  Further, the Debtor did not employ anyone who was knowledgeable in Java programming language or with Linux operating system experience.  *See id*. That, of course, is why when the Debtor developed its own code, the new code was written not in Java but in C# and hosted on Windows, not Linux.  Accordingly, even if the Debtor could conceivably access the source code (which it

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(continued…)

not intend to transfer the image back-up of the New Media Booking System to the Purchaser.

[4]      The Debtor's inability to access source code is similar to an individual who uses Microsoft Word programming on his or her computer.   The individual can use the Microsoft Word program to draft and edit documents, but he or she does not have access to the source code of Microsoft Word.

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could not), the Debtor did not have the resources or knowledge to do anything with such source code.  In short, the Debtor is only seeking to sell its own Booking System and related source code that it developed and is not seeking to sell the New Media Booking System or related source code.

9.       Third, the Debtor has deleted what is contained on all servers hosted on the AWS infrastructure to reduce costs.  Accordingly, the sale of the AWS infrastructure to the Purchaser will not include the New Media Booking System or the related source code.

10.      As a result of the foregoing, the Debtor reached out to counsel for New Media in an attempt to resolve the Objection prior to filing this reply.  The Debtor first explained all of the facts above, in two phone calls and an email. The Debtor then proposed to include the following language in the proposed order approving the Sale (the "**Sale Order**") to make it clear that the Debtor is not intending to sell the New Media Booking System or related source code in connection with the Sale or seeking to assume and assign the License Agreement to the Purchaser:

> Notwithstanding anything to the contrary in this Order or the PSA, the Property transferred to the Buyer and subject to the Sale shall not include that certain Agreement, dated May 14, 2015 (the "**License Agreement**") between Panos Kordonouris & Associates E.E. a/k/a New Media Concept Limited Partnership (collectively, "**New Media**"), as transferred to Goodwin Solutions GmbH, nor shall it include any intellectual property, software or source code of New Media.   Further, the Debtor is not assigning the License Agreement to the Buyer.

At the time of filing this reply, counsel for New Media has not responded to the Debtor's proposal, even though the proposal was made almost 36 hours ago.  The Debtor respectfully asserts that while the language is unnecessary, its willingness to add it fully moots the objection.

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## CONCLUSION

11.     As set forth above, the Debtor is not seeking to sell New Media's source code, is not currently using the New Media's source code and is not seeking to assume or assign the License Agreement.  Accordingly, the Objection should be overruled.  The Debtor is hopeful that New Media will agree to resolve the Objection by including the language set forth above in the Sale Order.

[*Remainder of Page Intentionally Left Blank*]

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Dated: November 20, 2015                      **ARENT FOX LLP**
        Wilmington, Delaware

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