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Attorneys for the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re

AIRPORT VAN RENTAL, INC., et al.,[1]

Debtors and Debtors in Possession.

☒ Affects all Debtors

☐ Affects the following Debtor(s):

Case No. 2:20-bk-20876-BB

Chapter 11 (Jointly Administered)

***EX PARTE* MOTION TO STRIKE UNAUTHORIZED SUR-REPLY OF 1ST SOURCE BANK [DOCKET NO. 943] TO REPLY IN SUPPORT OF THIRD INTERIM APPLICATION OF ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP FOR APPROVAL OF FEES AND REIMBURSEMENT OF EXPENSES INCURRED AS GENERAL BANKRUPTCY COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR THE PERIOD NOVEMBER 1, 2021, THROUGH APRIL 30, 2022**

Date: June 15, 2022
Time: 2:00 p.m.
Place: Courtroom 1539
255 E. Temple St.
Los Angeles, CA

[Hearing by ZoomGov][2]

[1] Pursuant to an order of the Court, this case is being jointly administered with a case filed by AVR Vanpool, Inc., a California corporation, case no. 2:20-bk-20883-BB. The case also was jointly administered with the following three cases that have been dismissed: Airport Van Rental, Inc., a Georgia corporation, case no. 2:20-bk-20877-BB; Airport Van Rental, Inc., a Nevada corporation, case no. 2:20-bk-20878-BB; and Airport Van Rental, LLP, a Texas limited liability partnership, case no. 2:20-bk-20882-BB.

[2] Information for ZoomGov appearance is available at: http://ecf-ciao.cacb.uscourts.gov/CiaoPosted/default.aspx.

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TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY JUDGE, AND OTHER INTERESTED PARTIES:

Elkins Kalt Weintraub Reuben Gartside LLP ("EK") hereby submits this *ex parte* motion to strike the unauthorized sur-reply filed on June 10, 2022 (the "Unauthorized Sur-Reply") [Docket No. 943] by 1st Source Bank in connection with the *Third Interim Application of Elkins Kalt Weintraub Reuben Gartside LLP for Approval of Fees and Reimbursement of Expenses Incurred as General Bankruptcy Counsel for the Official Committee of Unsecured Creditors for the Period November 1, 2021, Through April 30, 2022* (the "EK Fee Application") [Docket No. 920].

I. Local Bankruptcy Rule 9013-1 Does Not Permit the Filing of a Sur-Reply

1st Source's Unauthorized Sur-Reply must be stricken and not considered, because no applicable rule authorized its filing a mere three business days prior to the hearing on the EK Fee Application. Motions and responsive pleadings are governed by Federal Rule of Bankruptcy Procedure 9013 and Local Bankruptcy Rule ("LBR") 9013-1. As described herein, LBR 9013-1 contains a procedure by which a moving party files a motion (LBR 9013-l(c), (d), and (e)), the responding party may file an opposition or other response (LBR 9013-1(f)), and the moving party may file a reply (LBR 9013-l(g)). LBR 9013-1 also includes deadlines for the filing of the motion, opposition, and reply. LBR 9013-l(d), (f)(l), and (g).

LBR 9013-1 does not authorize the filing of a sur-reply, and 1st Source has not provided any authority for such filing to be considered. In fact, LBR 9013-1(g)(3) expressly states that "[u]nless the court finds good cause, a reply document not filed or served in accordance with this rule will **not** be considered." LBR 9013-1(g)(3) (emphasis added). Because 1st Source's Unauthorized Sur-Reply is not permitted under the Rules, it should be stricken and not considered.

II. The Unauthorized Sur-Reply Should Be Stricken Because It Contains New Arguments and "Evidence"

1st Source's Unauthorized Sur-Reply should be stricken and not considered because it contains new arguments and "evidence" that 1st Source failed to submit in support of its objection to the EK Fee Application. This Court's local rules provide that "[n]ew arguments or matters

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raised for the first time in reply documents will not be considered." LBR 9013-1(g)(4).

A cursory review of the Unauthorized Sur-Reply reveals that it includes multiple new arguments and evidence (Declaration of Jeff Buhr and Declaration of Haleh Naimi) – none of which was submitted with 1st Source's objection to the EK Fee Application. (For example, 1st Source now falsely alleges – for the first time – that EK engaged in "duplicate billing" by the two EK attorneys who are working on this matter.) Amazingly, 1st Source appears to have intended from the start to ignore this Court's rules and to sandbag EK in this manner. In its objection, 1st Source purported to "reserve[] all rights to more fully object to the Fee Application, to supplement th[e] Objection, to raise additional objections, or to seek to introduce evidence with respect to th[e] Objection at any time prior to or at the final hearing on the Objection." [Docket No. 926, at 6-11).] The Local Bankruptcy Rules do not permit – and the Court should not countenance – this type of litigation by ambush. To be clear, nothing in the Unauthorized Sur-Reply moves the needle or adds any merit to 1st Source's frivolous objection to the EK Fee Application. But just because the original objection and the Unauthorized Sur-Reply are meritless does not mean that 1st Source and other litigants should be permitted to file successive objections with new arguments and new evidence nearly two weeks after the objection deadline has passed. The Unauthorized Sur-Reply – filed three business days prior to a hearing that has been on calendar for weeks – should be stricken and disregarded by the Court.

III. The Immaterial, Impertinent, and Scandalous Statements Against EK in the Unauthorized Sur-Reply Should Be Stricken Under Federal Rule of Civil Procedure 12(f)

Under Federal Rule of Civil Procedure 12(f)(l), the Court has the power to strike immaterial, impertinent or scandalous matter from a pleading on its own motion. Fed. R. Civ. P. 12(f); *see 5A C. Wright and A. Miller, Federal Practice and Procedure (Civil) 2d* § 1382, at 712 (1990) ('"Scandalous' matter is that which improperly casts a derogatory light on someone, most typically a party to the action.") (footnote omitted); *Moore's Federal Practice* § 12.37[3] at 12-97 ("'Scandalous' generally refers to any allegation that unnecessarily reflects on the moral character of an individual or states anything in repulsive language that detracts from the dignity of the

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court.").

In addition to doubling down on its false and offensive assertion that EK essentially has engaged in wasteful conduct with no intention of providing a benefit to its client's constituency, 1st Source has included a serious personal attack on Michael Gottfried, one of the two EK attorneys working on this matter. At footnote 6 of the Unauthorized Sur-Reply, 1st Source irresponsibility and falsely asserts – as a matter of fact – that the Committee objected to the plan confirmation deadline incorporated into the financing motion due to Mr. Gottfried's travel plans. Specifically, 1st Source states that in "light of the statement Mr. Gottfried made at the hearing on the Debtors' Motion to Approve its Disclosure Statement, the objection to the September 1, 2022 deadline was more of a convenience concern so that Mr. Gottfried could close on his real estate acquisition overseas rather than a genuine concern for the unsecured creditors."

Contrary to 1st Source's unsupported assertion, the Committee's objection to the deadline had absolutely nothing to do with Mr. Gottfried's real estate acquisition overseas. Rather, the Committee was concerned that the inclusion of the September 1, 2022 deadline and resulting truncated confirmation schedule would inhibit the marketing process and result in the loss of bids that might otherwise be made. (Unfortunately, it appears that some of these concerns have materialized.) Moreover, at the time the Committee filed its opposition, Mr. Gottfried had not made any travel plans. The suggestion that the Committee would file an opposition to a financing motion based on counsel's travel plans is not only false, but also highly offensive. EK therefore requests that the Court strike the Unauthorized Sur-Reply. *See, e.g.*, *Magill v. Appalachia Intermediate Unit 08*, 646 F. Supp. 339,343 (W.D. Pa. 1986) (striking allegations that "reflect adversely on the moral character of an individual who is not a party to this suit" and which were "unnecessary to a decision on the matters in question"); *Pigford v. Veneman*, 215 F.R.D. 2, 4-5 (D.D.C. 2003) (striking unfounded accusations against opposing counsel); *Cairns v. Franklin Mint Co.*, 24 21 F. Supp. 2d 1013, 1037 (C.D. Cal. 1998) (striking allegation that "defendants are '[l]ike vultures feeding on the dead"'); *Nault's Auto. Sales, Inc. v. Am. Honda Motor Co.*, 148 F.R.D. 25, 29-34 (D.N.H. 1993) (noting that "[w]ith each passing week the pleadings assumed a more hostile and accusatory tone" and striking scandalous assertions).

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IV. Conclusion

For all of the foregoing reasons, EK respectfully requests that the Court strike and disregard the Unauthorized Sur-Reply in its entirety. EK further requests that the Court strike 1st Source's unfounded and defamatory statements against EK and Mr. Gottfried personally.

DATED: June 13, 2022

ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP

By: _____
ROYE ZUR
Attorneys for the Official Committee of Unsecured Creditors

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

Elkins Kalt Weintraub Reuben Gartside LLP, 10345 W. Olympic Blvd., Los Angeles, CA 90064

A true and correct copy of the foregoing document entitled (*specify*): **EX PARTE MOTION TO STRIKE UNAUTHORIZED SUR-REPLY OF 1ST SOURCE BANK [DOCKET NO. 943] TO REPLY IN SUPPORT OF THIRD INTERIM APPLICATION OF ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP FOR APPROVAL OF FEES AND REIMBURSEMENT OF EXPENSES INCURRED AS GENERAL BANKRUPTCY COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR THE PERIOD NOVEMBER 1, 2021, THROUGH APRIL 30, 2022** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) June 13, 2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) June 13, 2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) June 13, 2022, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Sheri Bluebond
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1534 / Courtroom 1539
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

June 13, 2022	Cecilia G. Avila	/s/ Cecilia G. Avila
Date	*Printed Name*	*Signature*

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