Docket #0708 Date Filed: 01/21/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	Chapter 11
TOTAL FINANCE INVESTMENT INC., *et al.*,[1]	Case No. 19-03734 (CAD)
Reorganized Debtors.	Jointly Administered
	Ref. Docket Nos. 613, 704, 705

REORGANIZED DEBTORS' OBJECTION TO THE SECOND MOTION TO VACATE ORDER DENYING PROOFS OF CLAIM FILED BY IMPACT NETWORKING, LLC

Total Finance Investment Inc. and its affiliated reorganized debtors in the above-captioned cases (collectively, the "Reorganized Debtors" and, prior to the effective date of their chapter 11 plan of reorganization, the "Debtors") respectfully submit this objection (the "Objection") to the second motion filed by Impact Networking, LLC ("Impact") requesting that the Court vacate its order sustaining the Debtors' objection to Impact's filed proofs of claim and disallowing such proofs of claim in their entirety [Docket No. 613] (the "September 12 Order"). In support of this Objection, the Reorganized Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. In its *Motion to Vacate Order Denying Proof of Claims* [Docket No. 704] (the "Second Motion to Vacate"), Impact asks the Court to vacate its September 12 Order or, in the alternative, to amend its September 12 Order to disallow Impact's Total Finance Proof of Claim and to allow its Car Outlet Proof of Claim (each as defined below) in the amount of $258,588.

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are Total Finance Investment Inc. (3753); Car Outlet Holding Inc. (8362); Car Outlet AC LLC (2282); Full Service Auto Repair AC LLC (6920); Todo Seguro AC LLC (7099); Todo Seguro Premium Finance AC LLC (3775); and Total Finance AC LLC (1965). The Reorganized Debtors' mailing address is 3015 W. Irving Park, Chicago, IL 60618.

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2. The Second Motion to Vacate is Impact's second request that the Court vacate its September 12 Order. Impact's first motion to vacate the September 12 Order [Docket No. 648] (the "First Motion to Vacate") was denied on November 14, 2019 after Impact (i) did not file a reply to the Reorganized Debtors' objection to the First Motion to Vacate [Docket No. 669] (the "Objection to First Motion to Vacate") and (ii) failed to appear at the hearing for which Impact noticed the First Motion to Vacate.

3. Though Impact's Second Motion to Vacate is quite similar to its First Motion to Vacate, and the arguments the Reorganized Debtors made in their Objection to First Motion to Vacate apply with equal force to the Second Motion to Vacate, Impact failed to address those arguments in its Second Motion to Vacate.

4. Specifically—as the Reorganized Debtors explained in their Objection to First Motion to Vacate—when a creditor waits more than 14 days[2] after entry of the challenged order to file a motion pursuant to rule 3008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rule 60 of the Federal Rules of Civil Procedure ("FRCP"), as incorporated by Bankruptcy Rule 9024, applies. See United Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204, 209 (9th Cir. B.A.P. 2006) ("When reconsideration under Rule 3008 is sought after the . . . appeal period has expired, the motion is subject to the constraints of FRCP 60(b) as incorporated by [Bankruptcy] Rule 9024."); In re United Airlines, Inc., 318 Fed. App'x 429, 431 (7th Cir. 2009) (unpublished Seventh Circuit opinion which cites Wylie for the proposition that

[2] The cases cited in this Objection refer to a 10-day period. However, the time for a party to move for a new trial or alter or amend a judgment pursuant to Bankruptcy Rule 9023 was extended from 10 to 14 days as of December 1, 2009—after the Wylie and United Airlines cases were decided. Therefore, under the current iteration of the Bankruptcy Rules, Bankruptcy Rule 9023 (which incorporates FRCP 59) applies to motions to reconsider for the first 14 days after an order is entered and Bankruptcy Rule 9024 (which incorporates FRCP 60) applies once the 14-day appeals period has elapsed.

when a motion is filed to reconsider an order sustaining a claim objection after the appeal period for the challenged order, Bankruptcy Rule 9024 requires application of FRCP 60(b)).

5. The Second Motion to Vacate references Bankruptcy Rule 9024 and FRCP 60(b), which state the specific, limited circumstances under which an order may be reconsidered. See Second Motion to Vacate at ¶ 12. Those circumstances include, among others, mistake, inadvertence, surprise, excusable neglect, newly discovered evidence that could not have been discovered within the appeals period, and fraud. Far from satisfying this stringent test, however, the Second Motion to Vacate only provides as justification a completely unsupported statement that "no prejudice will result to the debtor nor will there be any delay in final claims determination or distribution to creditors," and clearly has not established that any of the alternatives of FRCP 60(b) apply. See Second Motion to Vacate at ¶ 18.

6. Nor could Impact have satisfied FRCP 60(b). In its Second Motion to Vacate, Impact for the first time advanced legal and factual arguments against the positions taken by the Debtors in their objection to the proofs of claim filed by Impact [Docket No. 417] (the "Claim Objection"). Impact had every opportunity to make the arguments that it now offers in the 113 days that elapsed between the date the Debtors filed their Claim Objection (as defined below) and the Court's entry of the September 12 Order. Impact was provided with notice of the claim objection and the hearings thereon. The Debtors' counsel also informed Impact's counsel more than two weeks in advance of the September omnibus hearing that the Debtors would seek entry of the September 12 Order. Impact chose not to file a response to the Claim Objection or attend the hearing thereon, and cannot now seek a "do-over" without clearing the high bar of FRCP 60.

7. Further, the Second Motion to Vacate does not attach any documents or declarations to support its claims. Therefore, as of the date of this Objection Impact still has not

provided the Reorganized Debtors or the Court with any evidence to rebut the arguments the Debtors made—and supported with evidence—in the Claim Objection, other than the documents attached to the Proofs of Claim, which the Debtors adequately addressed in the Claim Objection.

8. Finally, contrary to Impact's assertion in the Second Motion to Vacate, the Debtors and their creditors would suffer significant prejudice if the Second Motion to Vacate were to be granted, including the cost of litigating over the substance of Impact's proofs of claim and costs associated with a delay in completing their claims reconciliation process. Because Impact has not satisfied the appropriate standard for reconsideration of the September 12 Order and granting the Second Motion to Vacate would unfairly prejudice the Debtors' general unsecured creditors, the Second Motion to Vacate should be denied with prejudice.

BACKGROUND

9. On May 2, 2019, Impact filed Claim No. 55 (the "Total Finance Proof of Claim") against Debtor Total Finance AC LLC ("TFAC") and Claim No. 58 (the "Car Outlet Proof of Claim" and, together with the Total Finance Proof of Claim, the "Proofs of Claim") against Debtor Car Outlet AC LLC ("COAC"), each in the amount of $336,166. The Proofs of Claim were purportedly based on an installment payment agreement (the "IPA") and a software maintenance support agreement, both of which were executed by COAC on September 29, 2017, and a separate invoice for the purported delivery of certain goods. See Proofs of Claim.

10. On May 22, 2019, the Debtors filed the Claim Objection. The Claim Objection asserted that the IPA is unenforceable because Impact never executed the IPA or, in the alternative, repudiated the IPA, Impact never delivered any software to COAC, and the invoice attached to the

Proofs of Claim is not supported by any enforceable agreement or any evidence of delivery of the goods and services which it purports to cover.[3]

11. Impact's response deadline for the Claim Objection was June 20, 2019 (the "Response Deadline"). See Claim Objection; Bankruptcy Rule 3007; Case Management Order [Docket No. 79]. Impact did not file a response to the Claim Objection by the Response Deadline.

12. On June 25, 2019, Debtors' counsel contacted Impact's counsel to confirm that Impact did not plan to prosecute the Proofs of Claim in the face of the Claim Objection and the passage of the Response Deadline. Impact's counsel informed the Debtors' counsel that Impact still intended to prosecute the Proofs of Claim and was in the process of engaging bankruptcy counsel. Without waiving its rights with respect to Impact's failure to meet the Response Deadline, the Debtors' counsel agreed to request a continuance of the hearing on the Claim Objection to allow Impact time to engage bankruptcy counsel.[4] The Court continued the hearing on the Claim Objection from June 27, 2019 to July 18, 2019 [Docket No. 503].

13. Impact's bankruptcy counsel filed an appearance in these chapter 11 cases on July 16, 2019 [Docket No. 533]. The Debtors requested, and the Court granted, additional continuances of the hearing on the Claim Objection on July 18, 2019 and August 15, 2019 to allow Impact's bankruptcy counsel sufficient time to get up to speed and respond to the Debtors' arguments in the Claim Objection. See Docket Nos. 551, 587. Despite the Debtors' counsel asking on multiple occasions that Impact articulate a response to the arguments the Debtors made in the Claim Objection, Impact never did.

[3] The Debtors also objected to the Total Finance Proof of Claim on the grounds that TFAC was not a party to any of the agreements that Impact provides as purported evidence of its claims.

[4] The Debtors' estates and Reorganized Debtors continue to reserve their rights to argue that any response to the Claim Objection ultimately filed by Impact is untimely.

14. On August 28, 2019—over three months after the Debtors filed the Claim Objection and over two months after Impact's Response Deadline passed—the Debtors' counsel informed Impact's bankruptcy counsel that if there was no significant progress toward resolving the Claim Objection by the September 2019 omnibus hearing (the "September Hearing"), the Debtors would ask the Court to enter an order sustaining the Claim Objection on both procedural and merits grounds.

15. Impact did not contact the Debtors' counsel between August 29 and the September Hearing and did not attend the September Hearing. At the September Hearing, Debtors' counsel asked that the Court enter an order granting the Claim Objection based on Impact's failure to respond by the Response Deadline and the undisputed evidence in support of the Claim Objection put forward by the Debtors at the September Hearing, including the declaration of Andrew DeLuca attached thereto as Exhibit F. Shortly after the September Hearing, the Court entered the September 12 Order.

16. Impact filed its First Motion to Vacate on October 7, 2019—25 days after entry of the September 12 Order [Docket No. 648]. The First Motion to Vacate asked the Court to vacate the September 12 Order and allow Impact an additional 14 days to file a response to the Claim Objection.

17. The Reorganized Debtors filed their Objection to First Motion to Vacate on November 7, 2019, which argued that Impact's First Motion to Vacate failed to meet the standard set forth in FRCP 60(b) for reconsideration of the September 12 Order. At the hearing on November 14, 2019—which counsel for Impact Networking did not attend—the Court determined

that Impact's First Motion to Vacate failed to establish that the September 12 Order should be vacated and entered an order denying the First Motion to Vacate [Docket No. 673].[5]

18. On January 10, 2020 Impact filed the Second Motion to Vacate, asking the Court to vacate its September 12 Order or, in the alternative, to amend its September 12 Order to disallow Impact's Total Finance Proof of Claim and to allow its Car Outlet Proof of Claim in the reduced amount of $258,588.00. In violation of the *Case Management Procedures Order* entered by the Court on February 22, 2019 [Docket No. 79] (the "Case Management Order"), Impact noticed the Second Motion to Vacate for a hearing on January 16, 2020—six days after the Second Motion to Vacate was filed, and a date for which no Omnibus Hearing (as defined in the Case Management Order) was scheduled.

19. In order to preserve all of their rights with respect to the Second Motion to Vacate and request additional time to file a substantive objection, the Reorganized Debtors filed their *Preliminary Objection to the Second Motion to Vacate Order Denying Proofs of Claim Filed by Impact Networking, LLC* [Docket No. 705] on January 14, 2020 (the "Preliminary Objection"). In the Preliminary Objection, the Reorganized Debtors asked that the Court (i) re-set the Second Motion to Vacate for hearing at the February 2020 Omnibus Hearing, as required by the Case Management Procedures, and (ii) grant the Reorganized Debtors the time to file this substantive Objection.

20. By a docket entry dated January 16, 2020, the Court continued the hearing on the Second Motion to Vacate to the Omnibus Hearing scheduled for January 23, 2020 [Docket No. 706].

[5] The Court's order denying the First Motion to Vacate references the Court's statements made on the record at the November 14, 2019 hearing as the reasons for denying the First Motion to Vacate. The Reorganized Debtors ordered a copy of the November 14, 2019 transcript on January 13, 2020, but have not yet received it as of the date of this Objection.

ARGUMENT

I. The Second Motion to Vacate Does Not—and Impact Cannot Possibly—Satisfy the Applicable Standard for Reconsideration of the September 12 Order

1. The Requirements of FRCP 60(b)

21. The Second Motion to Vacate relies on Bankruptcy Rules 3008 and 9024 and FRCP 60.[6] Where a motion is filed pursuant to Bankruptcy Rule 3008 more than 14 days after entry of the order for which reconsideration is sought, Bankruptcy Rule 9024 makes FRCP 60 applicable. In re United Airlines, Inc., 318 Fed. App'x 429, 431 (7th Cir. 2009) (citing United Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204, 209 (9th Cir. B.A.P. 2006)).[7]

22. Federal Rule of Civil Procedure 60(b) states that:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

[6] When a motion is filed pursuant to Bankruptcy Rule 3008 within 14 days of the entry of the original order, it is analogous to a motion pursuant to FRCP 59, as incorporated by Bankruptcy Rule 9023. Because the Second Motion to Vacate was filed more than 14 days after entry of the September 12 Order, Impact correctly relies on Bankruptcy Rule 9024 and FRCP 60 instead.

[7] While the Seventh's Circuit's United Airlines decision is unreported and therefore not binding law in this District, it strongly suggests that the Seventh Circuit agrees with the Ninth Circuit's analysis in the Wylie decision that FRCP 60 applies under these circumstances. Further, Bankruptcy Rule 9024, on its face, applies to all "cases under the [Bankruptcy] Code" except in certain enumerated circumstances not relevant to the Second Motion to Vacate. The Court followed the standards set forth in United Airlines and Wylie in denying the First Motion to Vacate.

23. To secure relief under FRCP 60(b), a movant must clear a high bar. Seventh Circuit law is clear that "'Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional circumstances.'" Karraker v. Rent-A-Center, Inc., 411 F.3d 831, 837 (7th Cir. 2005); see also Cash v. Ill Div. of Mental Health, 209 F.3d 695, 698 (7th Cir. 2000) (FRCP 60 exists "to allow courts to overturn decisions where 'special circumstances' justify an 'extraordinary remedy'").

24. Parties seeking relief may not rely on FRCP 60(b)(6) to make arguments they should have made at an earlier date. Karraker, 411 F.3d at 837 (determining that the "catch-all provision" in FRCP 60(b)(6) "is not an appropriate place to slip in arguments that should have been made earlier"). If a party had a fair opportunity to make its case prior to entry of the challenged order and events subsequent to entry of the order do not make enforcement of the order inappropriate, relief under FRCP 60(b) is not warranted. Wylie, 349 B.R. at 209 (Success under FRCP 60 "generally require[s] a showing that events subsequent to the entry of the judgment make its enforcement unfair or inappropriate, or that the party was deprived of a fair opportunity to appear and be heard in connection with an underlying dispute. This distinction is drawn in order to preserve the finality of the order allowing or disallowing a claim.").

2. Application of FRCP 60(b) to the Second Motion to Vacate

25. The facts in the Ninth Circuit's Wylie decision, which has been positively cited by the Seventh Circuit,[8] are particularly close to those underlying the Second Motion to Vacate. In the Wylie case, the debtor filed an objection to a creditor's proof of claim and the creditor failed to timely file a response or request a hearing. Wylie, 349 B.R. at 207. The bankruptcy court nevertheless set a hearing on the objection, and the creditor failed to appear. Id. At the hearing, the bankruptcy court considered the debtor's uncontested evidence, determined it was sufficient,

[8] See United Airlines, 318 Fed. App'x at 431.

and entered an order sustaining the objection. Id. at 207, 211. Fourteen days after entry of the order, the creditor filed a motion for reconsideration under Bankruptcy Rule 3008.[9] Id. The Wylie court examined the factual record and determined that the creditor did not satisfy the requirements of FRCP 60 under the circumstances. Id.

26. Similarly, the Debtors filed the Claim Objection and served it on Impact on May 22, 2019, with a response deadline of June 20, 2019. See Docket Nos. 417, 430. Impact did not file a response to the Claim Objection by the Response Deadline or between the Response Deadline and the September 12, 2019 Omnibus Hearing.[10] Despite the Debtor asking for several continuances of the hearing on the Claim Objection to allow Impact's bankruptcy counsel to familiarize himself with the case and prepare a response to the Claim Objection, and to potentially facilitate a consensual resolution of the Claim Objection, Impact never substantively engaged with the Debtors. More than two weeks before the September Hearing, counsel for the Debtors informed counsel for Impact that if significant progress was not made on resolving the Claim Objection in advance of the September Hearing, the Debtors would ask the Court to sustain the Claim Objection on both procedural and merits grounds. Impact did not appear at the September Hearing, the Debtors presented arguments and evidence in support of the Claim Objection, and the Court entered the September 12 Order.

27. Impact filed the First Motion to Vacate on October 7, 2019—25 days after entry of the September 12 Order it sought to vacate. Impact filed the Second Motion to Vacate on January

[9] While under the current rules a motion to reconsider filed fourteen days after entry of the order would be governed by FRCP 59 (as incorporated by Bankruptcy Rule 9023), under the previous version of the Bankruptcy Rules applied in the Wylie case, a party in interest had only 10 days to file a motion to reconsider before FRCP 60 (as incorporated by Bankruptcy Rule 9024) took effect. See note 2, *supra*.

[10] Though Impact made certain substantive arguments in response to the Claim Objection for the first time in its Second Motion to Vacate, such allegations do not constitute a proper response to the Claim Objection because they are not properly raised in a motion to vacate, unsupported by documents or declarations of those with knowledge of the underlying facts, and untimely.

10, 2020—120 days after entry of the September 12 Order and 57 days after the First Motion to Vacate was denied.

28. In the Second Motion to Vacate, Impact asserts that its failure to appear at the September 12, 2019 Omnibus Hearing was caused by a "calendaring error on the part of counsel for Impact." Impact offers no explanation for what caused the error and why it should be excused, and the Second Motion to Vacate offers no explanation for why Impact failed to respond to the Claim Objection by the Response Deadline.[11] Impact likewise offers no explanation for why it did not substantively respond to the arguments made by the Debtors in the Claim Objection until it filed the Second Motion to Vacate or why it has still not provided declarations or documents to support its position. Impact's assertions clearly fall short of the "exceptional circumstances" standard articulated by the Seventh Circuit for motions under FRCP 60. Rent-A-Center, 411 F.3d at 837. The Court should follow the example set by the Wylie court and deny the Second Motion to Vacate with prejudice as failing to satisfy FRCP 60(b).

29. Impact further asserts in the Second Motion to Vacate that it intended to withdraw the First Motion to Vacate or continue it to a further date, but counsel was "detained in another courtroom" during the November 14, 2019 hearing at which the First Motion to Vacate was denied. However, even if Impact had properly withdrawn its First Motion to Vacate or requested a continuance, it still has not demonstrated the "exceptional circumstances" required by the Seventh Circuit for motions under FRCP 60(b).

[11] The First Motion to Vacate stated that Impact's failure to timely respond to the Claim Objection was likewise caused by a "calendaring error." See First Motion to Vacate at ¶ 3.

II. Granting the Second Motion to Vacate Would Materially Prejudice the Debtors and Their Creditors

30. Impact asserts in the Second Motion to Vacate that "[n]o prejudice will result to the [D]ebtor[s] nor will there be any delay in final claims determination or distribution to creditors" if the Second Motion to Vacate is granted. See Second Motion to Vacate at ¶18. The Second Motion to Vacate provides no support for this assertion, and it is incorrect.

31. The Debtors completed their claims reconciliation process on January 9, 2020 when they filed a notice of withdrawal of their last pending claim objection in these chapter 11 cases. See Docket No. 699. Were the Second Motion to Vacate to be granted, the Reorganized Debtors would be required to litigate the merits of the Car Outlet Proof of Claim, with the result that the final settlement of claims against the Debtors in these chapter 11 cases would be materially delayed. Such a delay could ultimately delay closure of COAC's chapter 11 case, thereby leading to increased US Trustee's fees and other administrative costs.

32. Finally, the Debtors have already incurred significant legal fees and other administrative costs to object to Impact's Proofs of Claim, discuss the Proofs of Claim and Claim Objection with Impact, and respond to the First Motion to Vacate and Second Motion to Vacate. Because Impact still has not provided any evidence for the defenses it asserts it has to the Claim Objection other than the documents attached to the Proofs of Claim (which were addressed by the Debtors in the Claim Objection), it is unclear how expensive litigating Impact's Proofs of Claim will be. However, if the Second Motion to Vacate were granted, the Debtors would be forced to incur additional legal fees and other costs litigating the Car Outlet Proof of Claim, directly reducing and delaying distributions to the Debtors' creditors and interest holders as a result of the increased costs. Impact should not be permitted to impose such costs on the Debtors' creditors and interest holders as a result of its own, unexcused failures.

III. Impact Has Not Met Its Burden of Proof With Respect to Allowance of the Car Outlet Proof of Claim

33. In addition to the request to vacate the September 12 Order, the Second Motion to Vacate asks that the Car Outlet Proof of Claim be allowed in the reduced amount of $258,588.[12] The Debtors believe that Impact has failed to satisfy FRCP 60(b) and so the merits of the Claim Objection do not need to be reached. However, in the event the Court does decide to vacate its September 12 Order, the Second Motion to Vacate does not meet the burden of proof required for the allowance of the Car Outlet Proof of Claim as requested in the Second Motion to Vacate.

34. The allowance of claims is governed by § 502 of the Bankruptcy Code. A properly filed claim is presumed valid and is prima facie evidence of its own validity and amount. See Bankruptcy Rule 3001(f). The presumption is rebuttable, but the objector carries the initial burden to produce some evidence to overcome it. In re Vanhook, 426 B.R. 296, 298–99 (Bankr. N.D. Ill. 2010) ("'Once the objector has produced some basis for calling into question [the] allowability of a claim, the burden then shifts back to the claimant to produce evidence to meet the objection and establish that the claim in fact is allowable.'") (quoting In re O'Malley, 252 B.R. 451, 456 (Bankr. N.D. Ill. 1999) (emphasis added); In re Alewelt, 520 B.R. 704, 708 (Bankr. C.D. Ill. 2014) (citing Vanhook for the same proposition).

35. The Claim Objection, and the declaration of Andrew DeLuca attached thereto as Exhibit F, met the Debtors' initial burden of proof to rebut the presumed validity of the Proofs of

[12] The Car Outlet Proof of Claim was initially filed in the amount of $336,166, but Impact acknowledged in the Second Motion to Vacate that "it is not entitled to a claim for sale of server hardware, which constituted $77,578.00" of each Proof of Claim. See Second Motion to Vacate at ¶ 17. Impact further acknowledged in the Second Motion to Vacate that it "did not deal directly with Total Finance Investment Inc." and asserted that the Total Finance Proof of Claim was filed because Impact "wished to preserve its rights against the lead-case debtor." See Second Motion to Vacate at ¶ 16. For the avoidance of any potential confusion, the Reorganized Debtors note that the Total Finance Proof of Claim was filed against TFAC—not Total Finance Investment Inc. However, the Reorganized Debtors concur that Impact does not have a valid claim against either Total Finance Investment Inc. or TFAC.

Claim. In entering the September 12 Order, the Court determined that the Debtors had met their burden of proof, shifting the burden to Impact. In the event that the September 12 Order is vacated, that burden of proof still lies with Impact.

36. The Second Motion to Vacate claims that "business records of Impact Networking and correspondence between Impact Networking and COAC demonstrate" certain facts. See Second Motion to Vacate at ¶13–15. However, no business records, correspondence, or declarations from individuals with personal knowledge of the dispute are attached. Once a claim in bankruptcy is adequately disputed, "the claimant is obligated to prove up its claim, with the burden allocated as it would be outside of bankruptcy, without regard to Bankruptcy Rule 3001(f)." In re Coates, 292 B.R. 894, 904–05 (Bankr. C.D. Ill. 2003); see also Raleigh v. Ill. Dep't of Revenue, 530 U.S. 15, 22 n.2 (2000). Since Impact has not put forward any evidence to support the Proofs of Claim which has not already been rebutted by the Debtors and Reorganized Debtors, Impact cannot have met its burden to prove that a preponderance of the evidence supports the allowance of the Proofs of Claim.

37. The Debtors dispute many of the allegations made in the Second Motion to Vacate, and believe that their positions as described in the Claim Objection would ultimately be vindicated if the Debtors and Impact were to litigate over the Car Outlet Proof of Claim. However, the Debtors are not obligated to take any further steps to prove their positions unless the Second Motion to Vacate is granted and Impact first puts forth evidence of the claims made therein.

IV. This Objection is Timely

38. The Case Management Order governs all proceedings in these chapter 11 cases. Paragraph 1 of the Case Management Order specifies that parties may only schedule motions and other Requests for Relief (as defined in the Case Management Order) for hearing at regular,

monthly Omnibus Hearings scheduled to occur at least 14 days after service of the notice of the Request for Relief. Impact noticed the Second Motion to Vacate for a hearing on January 16, 2020—six days after the Second Motion to Vacate was filed, and a date for which no Omnibus Hearing was scheduled. Because the Second Motion to Vacate was filed fewer than 14 days prior to the January Omnibus Hearing, Paragraph 1 of the Case Management Order states that that Impact's Second Motion to Vacate be *automatically* rescheduled to be heard at the February 2020 Omnibus Hearing, and Paragraph 25 of the Case Management Order states that the objection deadline for the Second Motion to Vacate be no earlier than seven days prior to the February 2020 Omnibus Hearing.

39. In the event that the Court is inclined to shorten notice on the Second Motion to Vacate and hear the merits of the Second Motion to Vacate at the January 23, 2020 Omnibus Hearing, the Reorganized Debtors do not object, provided that this Objection be deemed timely as filed in accordance with the terms of the Case Management Order.

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For the reasons stated in the Objection, the Reorganized Debtors respectfully request that the Court (i) deny the Second Motion to Vacate with prejudice and (ii) grant the Debtors such other relief as is good and proper.

Dated: January 21, 2020
Chicago, Illinois

SIDLEY AUSTIN LLP

/s/ Bojan Guzina

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ATTORNEYS FOR THE REORGANIZED DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	Chapter 11
TOTAL FINANCE INVESTMENT INC., *et al.*,[1]	Case No. 19-03734 (CAD)
Reorganized Debtors.	Jointly Administered

NOTICE OF FILING

PLEASE TAKE NOTICE that on January 21, 2020, the undersigned filed with the Court the *Reorganized Debtors' Objection to the Second Motion to Vacate Order Denying Proofs of Claim filed by Impact Networking, LLC* (the "Reorganized Debtors' Objection"), a copy of which is hereby served upon you.

PLEASE TAKE FURTHER NOTICE that copies of the Reorganized Debtors' Objection and all documents filed in these chapter 11 cases are available free of charge by visiting http://www.kccllc.net/totalfinance. You may also obtain copies of any pleadings by visiting the Court's website at http://www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

Dated: January 21, 2020
Chicago, Illinois

SIDLEY AUSTIN LLP

/s/ Bojan Guzina

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ATTORNEYS FOR THE REORGANIZED DEBTORS

[1] The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are Total Finance Investment Inc. (3753); Car Outlet Holding Inc. (8362); Car Outlet AC LLC (2282); Full Service Auto Repair AC LLC (6920); Todo Seguro AC LLC (7099); Todo Seguro Premium Finance AC LLC (3775); and Total Finance AC LLC (1965). The Reorganized Debtors' mailing address is 3015 W. Irving Park, Chicago, IL 60618.