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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

AIRFASTTICKETS, INC.,

Debtor.

Chapter 11

Case No. 15-11951 (SHL)

**EX PARTE MOTION FOR ORDER AUTHORIZING FAREPORTAL  
INC. TO (A) CONDUCT A 2004 EXAMINATION OF AIRFASTTICKETS,  
INC. AND (B) SEEK RELATED DOCUMENT PRODUCTION**

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Fareportal Inc. ("Fareportal"), by and through its undersigned counsel, Sheppard Mullin Richter & Hampton, LLP files this motion (the "Motion") seeking an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"), authorizing Fareportal to conduct an examination of Airfasttickets, Inc. ("Airfasttickets" or the "Debtor"), pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure ("Rule 2004"), and requests that this Court enter the Proposed Order directing Airfasttickets to appear through its designated representatives for examination and to produce documents related to the infringement of Fareportal's intellectual property, trade secrets, and confidential and proprietary information. In support of this Motion, Fareportal submits the *Declaration of Werner G. Kunz in Support of the Ex Parte Motion for Order Authorizing Fareportal Inc. to (A) Conduct a 2004 Examination of Airfasttickets, Inc. and (B) Seek Related Document Production* (the "Kunz Declaration"), which is attached hereto as Exhibit B. In further support of this Motion, Fareportal respectfully states as follows:

#### **Preliminary Statement**

Fareportal is a leader in the highly competitive online air travel industry and, as such, has been the target of misappropriation of its Trade Secrets (defined below) and improper solicitation of its employees by competitors. Specifically, prior to the bankruptcy filing, Fareportal litigated against Airfasttickets based upon the misappropriation of Fareportal's Trade Secrets and unlawful solicitation of Fareportal's employees. Fareportal now finds itself in almost identical litigation against Travana, Inc. ("Travana"), formerly known as AirTourist, Inc. ("AirTourist") and which was formed for the purpose of purchasing substantially all of Airfasttickets' assets out of this bankruptcy case, on very similar facts and allegations. The evidence demonstrating such misappropriation and solicitation in both the previous litigation against the Debtor and the current litigation against Travana is significant.

In addition, it has recently come to Fareportal's attention that there is a continuity of identity between some of the key officers and individuals who were and are responsible and liable for the misappropriations of Fareportal's Trade Secrets at the Debtor and now with Travana. Specifically, and among others, Ahmet Seyalioglu (a/k/a Sevkett Seyalioglu), the former Vice President of Technology at Fareportal, served as Head of IT and Chief Technology Officer with the Debtor, and now serves as Chief Technology Officer of Travana. In addition, Jason Chen, a former member of the Debtor's board of directors and formerly the Debtor's co-Chief Executive Officer, is now President and CEO of Travana.

Accordingly, Fareportal now seeks authority to conduct a Rule 2004 examination of the Debtor, including the production of documents, in order to determine whether the Debtor continued to misappropriate Fareportal's Trade Secrets

and, specifically, whether the Debtor sold any such misappropriated Trade Secrets to Travana, who is now actively misappropriating Fareportal's Trade Secrets and soliciting its employees as the Debtor did before it.

Fareportal brings this request to the Court now because it only recently became aware of the Debtor's bankruptcy proceedings and the sale of its assets. Fareportal has never been provided with any notices of or related to the Debtor's bankruptcy cases or proceedings, including without limitation, notice of or any solicitation of interest in connection with the planned and approved sale of substantially all of the Debtor's assets to Travana. In fact, it was not until Fareportal commenced the current litigation against Travana on August 1, 2016 (described further below and in Exhibit 2 to the Kunz Declaration), that Fareportal became aware of the Debtor's bankruptcy and the sale of the Debtor's assets to Travana. As a result, Fareportal was deprived of the ability to conduct due diligence of or in connection with the sale process and

on the assets sold to Travana in order to, among other things, protect its Trade Secrets and  
prior to such sale.

Fareportal believes it has ample basis to seek discovery against the Debtor regarding certain of the assets transferred to Travana – namely the identity of the transferred source code and related assets on which the sale was based. Fareportal seeks this relief solely to protect its rights and Trade Secrets and to ensure that the estate does not inequitably distribute proceeds from the sale of assets that the Debtor may never have been entitled to possess, no less transfer. Fareportal has a clearly identifiable interest in discovering the nature of the assets and respectfully submits that *all* interested parties have an interest in not allowing the Debtor and its former officers, or the purchaser of such assets and its officers, to use the bankruptcy process to evade their liability for any such actions and, in turn, receive significant protections in the process.

In addition, Fareportal is acutely aware of the impending confirmation hearing scheduled to take place on October 13, 2016. If Fareportal does not determine whether its Trade Secrets were misappropriated and sold to Travana, it may ultimately be precluded from asserting a claim against the Debtor and any other equitable relief to which it is entitled. Accordingly, Fareportal respectfully requests that the Court grant this Motion.

#### **Jurisdiction**

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. The predicate for the relief requested in this Motion is Rule 2004.

### **Background**

#### **I. The Pre-Petition Litigation Between Fareportal and Airfasttickets**

3. Fareportal is a high-tech, high-touch travel technology company that provides travel-related services to customers and businesses worldwide. Fareportal owns and operates a number of online travel agencies ("OTA's") that primarily focus on helping customers search for and find inexpensive airfare. CheapOair and OneTravel are two of Fareportal OTA's and cater to individual travelers. CheapOair and OneTravel are among the most popular OTA websites in the world. The portion of the OTA air travel market upon which CheapOair and OneTravel focus is highly competitive. Kunz Decl. at ¶ 5.

4. Fareportal's OTA's also help customers search for and find inexpensive hotel rooms and car rentals. However, unlike entities such as Expedia, Travelocity and Priceline that focus primarily on helping customers secure vacation packages and hotel rooms, Fareportal's OTA's focus primarily on discounted airfare. *Id.* at ¶ 6.

5. Fareportal uses a .NET programming framework (the ".NET Framework") to run its OTA's. Upon information and belief, Fareportal is one of the few companies in the industry to use the .NET Framework. *Id.* at ¶ 7.

6. Fareportal has spent substantial resources developing trade secrets and confidential and proprietary information (collectively, the "Trade Secrets") in order to maintain a competitive advantage within the industry. The Trade Secrets owned by Fareportal include, but are not limited to the following: (i) source code; (ii) business plans and models; (iii) customer profile databases; (iv) customer contact information; (v) pricing plans, marketing strategies and future plans with respect to customers; (vi) contracts with Customer Relationship Management software suppliers and other vendors; (vii) repeat booking statistics; (viii) numerous analytics reports; (ix) passenger detail schematics; (x) customer booking details; and (xi) website traffic



source information. None of Fareportal's Trade Secrets are publicly available, and Fareportal has taken significant steps to protect the same. *Id.* at ¶ 8.

7. On February 22, 2013, Fareportal commenced a civil action by filing a complaint against Airfasttickets, Ahmet Seyalioglu ("Seyalioglu"), and Anna-Lisa Ford ("Ford," and together with Airfasttickets and Seyalioglu, the "Defendants"), in the Supreme Court of New York, New York County, Index No. 650587/2013 (the "2013 Complaint"). The 2013 Complaint alleged, *inter alia*, that (i) Defendants misappropriated Fareportal's Trade Secrets, (ii) Seyalioglu breached the restrictive covenants set forth in his employment agreement and stock option agreement with Fareportal, (iii) Ford breached the restrictive covenants set forth in her employment agreement with Fareportal, and (iv) Airfasttickets employed Seyalioglu and Ford in violation of those agreements. *Id.* at ¶ 9.

8. On February 22, 2013, the Supreme Court of New York, New York County entered an temporary restraining order (the "2013 TRO") that enjoined the Defendants "from using, referencing, or relying on any trade secrets or confidential, proprietary information misappropriated from Fareportal. *Id.* at ¶ 10.

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## **II. Airfasttickets' Bankruptcy Proceedings**

### **A. General Background**

13. On July 27, 2015, certain of the Airfasttickets' creditors filed an involuntary petition against Airfasttickets in the United States Bankruptcy Court for the Southern District of New York, seeking an order for relief under chapter 7 of title 11 of the United States Code (the "Bankruptcy Code"). Dk. No. 1.

14. On September 21, 2015, the Debtor filed its *Motion to Convert Chapter 7 Case to Chapter 11 Pursuant to 11 U.S.C. § 706(a)* seeking to convert the Debtor's case to one under chapter 11 of the Bankruptcy Code. Dk. No. 10.

15. On October 28, 2015, the Bankruptcy Court entered an order converting the case to chapter 11 of the Bankruptcy Code. Dk. No. 28.

16. Thereafter, Airfasttickets has been managing its affairs as a debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

### **B. Sale Process**

17. On October 26, 2015, Airfasttickets filed 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* (the "Sale Motion"). Dk. No. 27.

18. As set forth in the Sale Motion, Airfasttickets sought approval of the sale of substantially all of its intellectual property and software and certain related assets (the "Property") to AirTourist pursuant to a certain *Purchase and Sale Agreement* (the "Sale Agreement"). The Property included "[a]ll source code and rights to source code-past, present and future-that is compiled and installed on machines that run the AirFastTickets Website, including all Amazon infrastructure and hosted data contained in or associated with it, and all

configuration data necessary in order for the systems to operate properly.” Sale Agreement, Exhibit A, at ¶ 1. A full description of the Property was attached as Exhibit A to the Sale Agreement.

19. According to the Sale Motion, AirTourist was a newly-formed entity. Sale Motion, at ¶ 33. It should be noted, however, that both the Debtor and AirTourist, now Travana, have many key employees in common. Specifically, prior to the bankruptcy case, Jason Chen (“Chen”) was a member of the Debtor’s board of directors and co-Chief Executive Officer (“CEO”). At the time of the sale, Chen was CEO of AirTourist, now Travana. In addition, prior to the sale Ahmet Seyalioglu (a/k/a Sevket Seyalioglu), the former Vice President of Technology at Fareportal, served as Head of IT and Chief Technology Officer with the Debtor, and now serves as Chief Technology Officer of Travana. *Id.*

20. On November 1, 2015, Panos Kordonouris & Associates E.E. a/k/a New Media Concept Limited Partnership (“New Media”) and Goodwin Solutions GmbH (“Goodwin”) filed an objection (the “Objection”) to the Sale Motion. Dk. No. 65. As set forth in the Objection, New Media and Goodwin objected to the sale of an on-line booking and payment system that New Media and Goodwin licensed to Airfasttickets. Objection at ¶¶ 4–7.

21. On November 24, 2015, the Bankruptcy Court entered an order approving the Sale Motion (the “Sale Order”). Dk. No. 65. The Sale Order approved the sale of the Property to AirTourist, except with respect to the license owned by New Media and Goodwin. *See* Sale Order at ¶ 19.

22. Fareportal has never received any notices in connection with the Debtor’s bankruptcy case, including notice of the bankruptcy case, or any information, solicitations for

interest in<sup>2</sup> or other notices in connection with the Sale Motion or the Sale Order, and was not aware of the Debtor's bankruptcy case until recently. In fact, Fareportal only learned of the existence of the bankruptcy case on August 1, 2016 through a third-party and in connection with the process of commencing the currently pending 2016 Complaint (defined below). Kunz Decl. at ¶ 15.

**C. The Disclosure Statement and the Plan**

23. On July 11, 2016, Airfasttickets filed the *Motion of the Debtor for an Order (i) Approving its Disclosure Statement, (ii) Establishing Plan Solicitation and Voting Procedures, (iii) Scheduling a Confirmation Hearing, and (iv) Establishing Notice and Objection Procedures for Confirmation of the Debtor's Chapter 11 Plan of Liquidation* which sought among other forms of relief, approval of a disclosure statement (the "Disclosure Statement") and a chapter 11 plan of liquidation (the "Plan"). Dk. No. 159.

24. On August 8, 2016, the Debtor filed an amended Disclosure Statement and Plan. Dk. No. 178. Among other things, the Disclosure Statement provides that the distributions and other payments on claims to be made under the Plan are based in part, on the proceeds from the sale of substantially all of the Debtor's assets to Travana. See Disclosure Statement at Art. V.A.

25. On August 12, 2016, the Court entered an order approving the Disclosure Statement. Dk. No. 184. The hearing on confirmation of the Plan is scheduled for October 13, 2016. *Id.* at ¶ 20.

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<sup>2</sup> Although the Debtor states in the Sale Motion that it did "not believe that *further marketing* or conducting an auction with respect to [the Property] would procure higher or better offers" (Sale Motion ¶ 35, emphasis added) which appears to build on the statement made in Paragraph 27 of the *Declaration of Adam Meislik in Support Debtor's Motion Authorization to Sell Substantially All of Its Property Free and Clear of All Liens, Claims, Encumbrances, and Other Interests to Airtourist* (Dk. No. 27-3) that "GlassRatner contacted a number of strategic buyers regarding a potential sale of the Debtor's business," Fareportal, who was known to the Debtor and is well known in the industry, was never solicited. Fareportal is clearly a potential strategic buyer and may be the most obvious of potential strategic buyers.

### **III. Fareportal's Litigation Against Travana and Jason Ware**

26. In 2013, Fareportal created and launched a loyalty and Customer Relationship Management ("CRM") program. As a result, Fareportal commenced a search for someone who could lead that initiative as Fareportal's first and only Associate Director, Loyalty & CRM. The Associate Director, Loyalty & CRM would be responsible for creating Fareportal's CRM & Loyalty Department (the "Department"). Kunz Decl. at ¶ 16.

27. On or about October 29, 2013, and after an intensive search, Jason Ware ("Ware") was hired by, and began his employment at, Fareportal as its Associate Director, Loyalty and CRM. In connection with the commencement of Ware's employment at Fareportal, Ware entered into an employment agreement, dated November 6, 2013 (the "Ware Agreement"). The Ware Agreement provided that Ware would not disclose, divulge, furnish, or make accessible to anyone outside or otherwise used by him except in the regular course of business. In addition, Ware agreed to certain non-competition and non-solicitation provisions of the Ware Agreement. *Id.* at ¶ 17.

28. In order to assist Ware in the performance of his job duties as Associate Director, Loyalty and CRM, Fareportal provided him with access to certain of its well-protected Trade Secrets. For example, Ware was provided with special privileges to access all of Fareportal's customer information, including customer profiles and customer booking data and was given full access to Fareportal's Google Analytics database, which included marketing sources, website traffic, and conversion rate information. Ware was also provided with access to Fareportal's internal data reporting and analytics tools, which analyzed Fareportal's extensive customer database for customer trends and projected future sales, pricing and other strategies. *Id.* at ¶ 18.

29. On or about June 17, 2016, Ware notified Fareportal of his intent to resign from his employment, effective July 1, 2016. *Id.* at ¶ 19. Following his resignation from Fareportal, Ware began working at Travana as its Director, Loyalty and CRM. *Id.*

30. After Fareportal learned that Ware began working at Travana in breach of the Ware Agreement, Fareportal launched an investigation and review of Ware's electronic correspondence, files and history while Ware was working at Fareportal and leading up to his resignation and departure. Fareportal learned from such review that Ware had stolen Fareportal's trade secrets and confidential and proprietary information by emailing such information from his Fareportal email account to his personal Yahoo email account. *Id.* at ¶ 20.

31. Ware's emailing of Fareportal's trade secrets and confidential and proprietary information from his Fareportal email account to his personal email account exceeded Ware's authorized access to Fareportal's computer system and databases. *Id.* at ¶ 21.

32. Fareportal further learned that Ware had started developing business models for Travana while still employed by Fareportal. *Id.* at ¶ 22.

33. To date, Fareportal has discovered no less than ten separate emails wherein Ware misappropriated Fareportal's trade secrets and confidential and proprietary information. Significantly, of those ten emails, Ware sent six of them to himself in June 2016, and of those six, four of them were sent after he provided Fareportal with his resignation notice, and included, among other things, emails containing Fareportal source code and a Loyalty Strategy and Loyalty Rewards Program model that he had prepared for Travana while still employed by

Fareportal and which is based off of Fareportal's Loyalty Strategy and Loyalty Rewards Program.<sup>3</sup> *Id.* at ¶ 23.

34. Upon information and belief, Ware has used the information that he forwarded to his personal email from his Fareportal email to perform his job duties for Travana.

35. Upon information and belief, Ware is performing the exact same duties for Travana that he performed while employed at Fareportal. *Id.* at ¶ 25.

36. Upon information and belief, Travana hired Ware to develop the very same programs, platforms, databases and strategies that he developed for Fareportal and is using Fareportal's Trade Secrets to do so. *Id.* at ¶ 26.

37. Upon information and belief, Travana was aware of Ware's post-employment obligations to Fareportal – including the Agreement's confidentiality, non-competition and non-solicitation provisions – and nevertheless hired Ware in violation of the Agreement. *Id.* at ¶ 27.

38. On August 1, 2016, Fareportal commenced a civil action (the "2016 Complaint") against its former employee Jason Ware ("Ware") and Travana in the Supreme Court of New York, New York County, Index No. 653995/2016, alleging, *inter alia*, that Travana misappropriated Fareportal's trade secrets and confidential and proprietary information by improperly soliciting and hiring Fareportal's employees, including Ware, in order to obtain Fareportal's trade secrets. *Id.* at ¶ 28.

39. Also, on August 1, 2016, Fareportal filed a motion for a temporary restraining order, a preliminary injunction, and expedited discovery (the "TRO Motion") related to the

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<sup>3</sup> A detailed description of Ware's misappropriations is provided in the TRO Motion attached as Exhibit 2 to the Kunz Declaration, and in the Declaration to the extent not included in the TRO Motion, but discovered since the filing of the TRO Motion.



allegations in the 2016 Complaint. *Id.* at ¶ 16. A copy of the TRO Motion is attached as Exhibit 2 to the Kunz Declaration. *Id.* at ¶ 29.

40. Further, on August 1, 2016, the Supreme Court of New York, New York County entered an *Order to Show Cause for a Preliminary Injunction with Temporary Restraining Order* (the “2016 TRO”). Pursuant to the 2016 TRO, Ware and Travana were enjoined from “using, referencing, or relying on any of Fareportal’s trade secrets and confidential and proprietary information . . . .” Further, the court also scheduled an order to show cause for October 5, 2016 on why a preliminary injunction should not be granted on the following:

- a. Enjoining Ware from working at Travana, or any other competitor of Fareportal, for one ( 1) year from today;
- b. Enjoining Ware from working with any former Fareportal employees, or soliciting any of Fareportal’s employees or customers, for three (3) years from today;
- c. Enjoining Ware, Travana, and their employees, officers, agents, subsidiaries or affiliates from using, referencing, or relying on any trade secrets and confidential and proprietary information misappropriated from Fareportal;
- d. Ordering Ware, Travana, and their employees, officers, agents, subsidiaries or affiliates, to return to Fareportal all trade secrets and confidential and proprietary documents and information (including electronic copies of such information) that were transmitted or removed from Fareportal’s premises;
- e. Permitting discovery to proceed by Fareportal on an expedited basis; and
- f. Ordering an attorney-supervised inspection of all computers, including hard drives and mobile storage devices in Defendants’ possession, custody or control, including but not limited to, Ware’s personal computer, Travana’s computer network and systems, and any computers used by Ware in the course of his employment with Travana.

*Id.* at ¶ 30.

41. Ware is not the first former Fareportal employee that Travana has poached. Travana currently employs at least four other former Fareportal employees – most notably,

Andre Azer (“Azer”) and Seyalioglu, both of whom executed employment agreements similar to Ware’s Agreement, and one of which was employed by the Debtor. *Id.* at ¶ 31.

42. Specifically, on or about July 8, 2016, Fareportal learned that Azer and Seyalioglu had commenced employment at Travana. Fareportal continues to investigate whether Azer, Seyalioglu or any other former Fareportal employees have breached their post-employment obligations to Fareportal on behalf of Travana.<sup>4</sup> *Id.* at ¶ 32.

#### **Relief Requested**

43. By this Motion, Fareportal respectfully requests entry of the Proposed Order under Rule 2004 permitting Fareportal to conduct an examination of the Debtor and to seek related document production in connection with the potential continued misappropriation of Fareportal’s Trade Secrets. Fareportal believes that the discovery that it seeks is very narrowly tailored and is not, in any way, burdensome nor harassing. Specifically, Fareportal is seeking information with respect to, among other things, the identity of the Transferred Source Code (as defined in Exhibit C attached hereto) which forms the crux of the sale to Travana and around which Travana is now building its business. The first set of Fareportal’s Rule 2004 document requests is attached to this Motion as Exhibit C.

#### **Basis for Relief**

44. Rule 2004(a) provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” Rule 2004(b) provides further that the scope of such examination may relate to “the acts, conduct, or property or to the liabilities and financial

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<sup>4</sup> It is worth noting that Fareportal has learned that Travana is actively targeting certain other current Fareportal employees to assist it in the design and launch of its new OTA, and that Ware, Azer, Seyalioglu, and potentially others, have been contacting current Fareportal employees in an attempt to entice them to resign from their employment at Fareportal and join Travana and is actively recruiting software engineers trained in the .NET Framework in order to further target Fareportal’s Trade Secrets. Kunz Decl. at ¶ 33.

condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." In addition, Rule 2004(c) provides that "the attendance of an entity for examination and for the production of documents . . . may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial."

45. "The purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred." *In re Almatris B.V.*, No. 10-12308, 2010 WL 4877868, at \*3 (Bankr. S.D.N.Y. Nov. 24, 2010); *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004).

46. Discovery under Rule 2004 can be used as a "pre-litigation discovery device." *In re Wilson*, 413 B.R. 330, 336 (Bankr. E.D. La. 2009). "No contested matter or adversary proceeding need be instituted as a prerequisite to conducting an examination under this rule." *In re Almatris*, 2010 WL 4877868, at \*3. Consequently, a Rule 2004 motion need not be tied to specific factual allegations at issue between parties. *In re Symington*, 209 B.R. 678, 684 (Bankr. D. Md. 1997).

47. Courts consistently emphasize that the scope of a Rule 2004 examination is extremely broad; even broader than discovery available under the Federal Rules of Civil Procedure. A Rule 2004 examination can legitimately be in the nature of a "fishing expedition." *In re Washington Mut.*, 408 B.R. 45, 50 (Bankr. D. De. 2009) ("The scope of a Rule 2004 examination is 'unfettered and broad' . . . [and] 'is commonly recognized as more in the nature of a' fishing expedition." (internal citations omitted)); *In re Hughes*, 281 B.R. 224, 226 (Bankr. S.D.N.Y. 2002) ("[I]t is well settled that the scope of examination allowed under Rule 2004 is

broad than discovery allowed under the Federal Rules of Civil Procedure and may be in the nature of a ‘fishing expedition.’”).

48. Here, the requested relief is well within the scope of Rule 2004 because it would permit Fareportal to “determin[e] the nature and extent of the bankruptcy estate, reveal[] assets, examin[e] transactions and assess[] whether wrongdoing has occurred.” *In re Almatix*, 2010 WL 4877868, at \*4.

49. As exemplified above, Fareportal has ample reason to believe that its Trade Secrets may have been sold by the Debtor to Travana, based on (a) Fareportal’s history as a target of the Debtor for such misappropriation and unlawful solicitation, (b) Travana’s current misappropriation of Fareportal’s Trade Secrets and improper solicitation of employees with access to Fareportal’s Trade Secrets by Travana, (c) the fact that Travana was formed for the purpose of and did purchase substantially all of the assets of the Debtor to continue the Debtor’s business in the same fashion as previously conducted, and (d) that Travana employs certain former officers and other employees of the Debtor, including Seyalioglu, who worked for Fareportal and was the primary target of the 2013 TRO after being employed by the Debtor, and others who manage Travana and have continued to pattern of misappropriation and solicitation that begun with the Debtor even before the bankruptcy case was filed.

50. In addition, Fareportal has a clearly identifiable interest in ensuring that the  
in the course of and under the inappropriate  
protections of these bankruptcy proceedings.

51. Specifically, Fareportal obtained the 2013 TRO against the Airfastickets and others enjoining them from using, referencing, or relying on Fareportal’s Trade Secrets. Chen served as a member of the board of directors and as the Co-CEO of Airfasttickets. On

information and belief, Chen ultimately resigned from the Debtor and was involved in forming Travana to purchase the Debtor's business and assets during the bankruptcy case. Travana, under the leadership of Chen, employs both Seyalioglu and Ware, and other former Fareportal employees, and continues to aggressively solicit Fareportal's other employees in order to exploit Fareportal's Trade Secrets to the significant detriment of Fareportal, and knowingly damage Fareportal's business. Accordingly, Chen as an officer and director of the Debtor, and now as a founder and CEO/President of Travana, has played prominently in the history between Fareportal, on the one hand, and the Debtor and Travana, on the other. This continuity of leadership and pattern of repetitive and systematic misappropriation (and solicitation) provides a strong basis for Fareportal's concern that the Debtor may have

transferred misappropriated Trade Secrets to Travana.

52. As Fareportal was not provided any notice of the bankruptcy or the sale, including, as described above, any solicitation of interest, Fareportal was denied the opportunity to conduct due diligence of the sale process and, if necessary, to object to the sale of the Property to Travana (or, if desirable, compete for the Property). Given the impending confirmation of this chapter 11 case, it is absolutely critical that Fareportal be permitted to conduct an immediate examination of the Debtor under Rule 2004 to obtain discovery of certain facts regarding the potential that the Debtor illegally and inequitably sold Fareportal's Trade Secrets to Travana. If it is deprived of this opportunity, Fareportal believes that it will suffer significant and irreparable harm.

53. Moreover, Fareportal believes that all parties in interest in this bankruptcy case have an interest in ensuring that the Debtor and Travana, who have a commonality of former

and current officers and management, did not abuse the bankruptcy process to the significant detriment of its creditors.

54. To the extent that Airfasttickets in fact misappropriated Fareportal's Trade Secrets, Fareportal asserts its status as a creditor of Airfasttickets and reserves its rights with respect to seeking appropriate relief from any previous orders of the Court, including without limitation, and/or bring a motion for relief from the Sale Order under Federal Rule of Civil Procedure 60(b).

**No Prior Request**

55. No prior request for the relief sought in this Motion has been made to this or any other court.

**Notice**

56. No trustee or examiner has been appointed in this chapter 11 case. Fareportal will serve notice of this Motion on all parties entitled to such notice in accordance with Bankruptcy Rule 2002. Fareportal respectfully submits that no further notice of this Motion is required.

WHEREFORE, Fareportal respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as is just.

Dated: August 24, 2016  
New York, New York

**SHEPPARD MULLIN RICHTER & HAMPTON LLP**

By: /s/ Malani J. Cademartori  
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*Counsel to Fareportal Inc.*

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

AIRFASTTICKETS, INC.,

Debtor.

Chapter 11

Case No. 15-11951 (SHL)

**ORDER GRANTING EX PARTE MOTION FOR 2004 EXAMINATION**

Upon the *ex parte* motion (the “Motion”) of Fareportal Inc. (“Fareportal”) for authorization to (a) conduct an examination of Airfasttickets, Inc. (the “Debtor”) pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and (b) seek related document production; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and no objections to the Motion having been heard; and it appearing that the relief requested in the Motion is proper pursuant to Bankruptcy Rule 2004; after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Fareportal shall be permitted to conduct an examination of the Debtor pursuant to Bankruptcy Rule 2004 in connection with the Trade Secrets (as such term is defined in the Motion).



3. The Debtor shall produce for inspection and copying the documents identified in Exhibit C to the Motion, and any other documents requested by Fareportal that are within the scope of the Motion, no later than fourteen (14) days after entry of this Order at the offices of counsel to Fareportal, Sheppard Mullin, Richter & Hampton, LLP (Attn: Malani J. Cademartori, Esq. and Eric Raphan, Esq.), 30 Rockefeller Plaza, New York , New York, 10112.

4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York  
\_\_\_\_\_, 2016

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Kunz Declaration**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

AIRFASTTICKETS, INC.,

Debtor.

Chapter 11

Case No. 15-11951 (SHL)

**DECLARATION OF WERNER G. KUNZ IN SUPPORT OF THE *EX PARTE*  
MOTION FOR ORDER AUTHORIZING FAREPORTAL INC. TO (A)  
CONDUCT A 2004 EXAMINATION OF AIRFASTTICKETS, INC.  
AND (B) SEEK RELATED DOCUMENT PRODUCTION**

I, Werner G. Kunz, make this declaration under 28 U.S.C. § 1746:

1. I submit this Declaration in support of the *Ex Parte Motion for Order Authorizing Fareportal Inc. to (A) Conduct a 2004 Examination of Airfasttickets, Inc. and (B) Seek Related Document Production* (the "Motion").<sup>1</sup>

2. I am a Chief Operating Officer at Fareportal, Inc. ("Fareportal"), a technology company with domestic offices in New York City and Las Vegas, and foreign offices in Canada, Mexico, London, and India. I am a resident in Fareportal's headquarters located at 135 West 50 Street, Suite 500, New York, NY 10020

3. Except as otherwise indicated herein, I have personal knowledge of the matters and issues set forth herein or have gained knowledge of such matters from my review of the relevant documents, or from information provided to me or verified by Fareportal's management, other employees, and/or professional advisors. If called upon to testify, I would testify competently to the facts set forth herein.

4. I have reviewed the Motion or have otherwise had the contents of the Motion explained to me and, to the best of my knowledge, insofar as I have been able to ascertain after

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<sup>1</sup> All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

reasonable inquiry, I believe that the approval of the relief requested therein is necessary to determine whether Fareportal's trade secrets and confidential and proprietary information have been misappropriated.

5. Fareportal is a high-tech, high-touch travel technology company that provides travel-related services to customers and businesses worldwide. Fareportal owns and operates a number of online travel agencies ("OTA's") that primarily focus on helping customers search for and find inexpensive airfare. CheapOair and OneTravel are two of Fareportal OTA's and cater to individual travelers. CheapOair and OneTravel are among the most popular OTA websites in the world. The portion of the OTA air travel market upon which CheapOair and OneTravel focus is highly competitive.

6. Fareportal's OTA's also help customers search for and find inexpensive hotel rooms and car rentals. However, unlike entities such as Expedia, Travelocity and Priceline that focus primarily on helping customers secure vacation packages and hotel rooms, Fareportal's OTA's focus primarily on discounted airfare.

7. Fareportal uses a .NET programming framework (the ".NET Framework") to run its OTA's. Upon information and belief, Fareportal is one of the few companies in the industry to use the .NET Framework.

8. Fareportal has spent substantial resources developing trade secrets and confidential and proprietary information (collectively, the "Trade Secrets") in order to maintain a competitive advantage within the industry. The Trade Secrets owned by Fareportal include, but are not limited to the following: (i) source code; (ii) business plans and models; (iii) customer profile databases; (iv) customer contact information; (v) pricing plans, marketing strategies and future plans with respect to customers; (vi) contracts with Customer Relationship Management

software suppliers and other vendors; (vii) repeat booking statistics; (viii) numerous analytics reports; (ix) passenger detail schematics; (x) customer booking details; and (xi) website traffic source information. None of Fareportal's Trade Secrets are publicly available, and Fareportal has taken significant steps to protect the same.

9. On February 22, 2013, Fareportal commenced a civil action by filing a complaint against Airfasttickets, Ahmet Seyalioglu ("Seyalioglu"), and Anna-Lisa Ford ("Ford," and together with Airfasttickets and Seyalioglu, the "Defendants"), in the Supreme Court of New York, New York County, Index No. 650587/2013 (the "2013 Complaint"). The 2013 Complaint alleged, *inter alia*, that (i) Defendants misappropriated Fareportal's Trade Secrets, (ii) Seyalioglu breached the restrictive covenants set forth in his employment agreement and stock option agreement with Fareportal, (iii) Ford breached the restrictive covenants set forth in her employment agreement with Fareportal, and (iv) Airfasttickets employed Seyalioglu and Ford in violation of those agreements.

10. On February 22, 2013, the Supreme Court of New York, New York County entered an temporary restraining order (the "2013 TRO") that enjoined the Defendants "from using, referencing, or relying on any trade secrets or confidential, proprietary information misappropriated from Fareportal.

11.

12.

13.

14.

15. Fareportal has never received any notices in connection with the Debtor's bankruptcy case, including notice of the bankruptcy case, or any information, solicitations for interest in or other notices in connection with the Sale Motion or the Sale Order, and was not

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aware of the Debtor's bankruptcy case until recently. In fact, Fareportal only learned of the existence of the bankruptcy case on August 1, 2016 through a third-party and in connection with the process of commencing the currently pending 2016 Complaint (defined below).

16. In 2013, Fareportal created and launched a loyalty and Customer Relationship Management ("CRM") program. As a result, Fareportal commenced a search for someone who could lead that initiative as Fareportal's first and only Associate Director, Loyalty & CRM. The Associate Director, Loyalty & CRM would be responsible for creating Fareportal's CRM & Loyalty Department (the "Department").

17. On or about October 29, 2013, and after an intensive search, Jason Ware ("Ware") was hired by, and began his employment at, Fareportal as its Associate Director, Loyalty and CRM. In connection with the commencement of Ware's employment at Fareportal, Ware entered into an employment agreement, dated November 6, 2013 (the "Ware Agreement"). The Ware Agreement provided that Ware would not disclose, divulge, furnish, or make accessible to anyone outside or otherwise used by him except in the regular course of business. In addition, Ware agreed to certain non-competition and non-solicitation provisions of the Ware Agreement.

18. In order to assist Ware in the performance of his job duties as Associate Director, Loyalty and CRM, Fareportal provided him with access to certain of its well-protected Trade Secrets. For example, Ware was provided with special privileges to access all of Fareportal's customer information, including customer profiles and customer booking data and was given full access to Fareportal's Google Analytics database, which included marketing sources, website traffic, and conversion rate information. Ware was also provided with access to Fareportal's internal data reporting and analytics tools, which analyzed Fareportal's extensive customer database for customer trends and projected future sales, pricing and other strategies.

19. On or about June 17, 2016, Ware notified Fareportal of his intent to resign from his employment, effective July 1, 2016. Following his resignation from Fareportal, Ware began working at Travana as its Director, Loyalty and CRM.

20. After Fareportal learned that Ware began working at Travana in breach of the Ware Agreement, Fareportal launched an investigation and review of Ware's electronic correspondence, files and history while working at Fareportal and leading up to his resignation and departure. Fareportal learned from such review that Ware had stolen Fareportal's trade secrets and confidential and proprietary information by emailing such information from his Fareportal email account to his personal Yahoo email account.

21. Ware's emailing of Fareportal's trade secrets and confidential and proprietary information from his Fareportal email account to his personal email account exceeded Ware's authorized access to Fareportal's computer system and databases.

22. Fareportal further learned that Ware had started developing business models for Travana while still employed by Fareportal.

23. To date, Fareportal has discovered no less than ten separate emails wherein Ware misappropriated Fareportal's trade secrets and confidential and proprietary information. Significantly, of those ten emails, Ware sent six of them to himself in June 2016, and of those six, four of them were sent after he provided Fareportal with his resignation notice, and included, among other things, emails containing Fareportal source code and a Loyalty Strategy and Loyalty Rewards Program model that he had prepared for Travana while still employed by



Fareportal and which is based off of Fareportal's Loyalty Strategy and Loyalty Rewards Program.<sup>3</sup>

24. Upon information and belief, Ware has used the information that he forwarded to his personal email from his Fareportal email to perform his job duties for Travana.

25. Upon information and belief, Ware is performing the exact same duties for Travana that he performed while employed at Fareportal.

26. Upon information and belief, Travana hired Ware to develop the very same programs, platforms, databases and strategies that he developed for Fareportal and is using Fareportal's Trade Secrets to do so.

27. Upon information and belief, Travana was aware of Ware's post-employment obligations to Fareportal – including the Agreement's confidentiality, non-competition and non-solicitation provisions – and nevertheless hired Ware in violation of the Agreement.

28. On August 1, 2016, Fareportal commenced a civil action (the "2016 Complaint") against its former employee Jason Ware ("Ware") and Travana in the Supreme Court of New York, New York County, Index No. 653995/2016, alleging, *inter alia*, that Travana misappropriated Fareportal's trade secrets and confidential and proprietary information by improperly soliciting and hiring Fareportal's employees, including Ware, in order to obtain Fareportal's trade secrets.

29. Also, on August 1, 2016, Fareportal filed a motion for a temporary restraining order, a preliminary injunction, and expedited discovery (the "TRO Motion") related to the allegations in the 2016 Complaint. *Id.* at ¶ 16. A copy of the TRO Motion is attached as to this Declaration as Exhibit 2.

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<sup>3</sup> A detailed description of Ware's misappropriations is provided in the TRO Motion attached as Exhibit 2 to this Declaration.

30. Further, on August 1, 2016, the Supreme Court of New York, New York County entered an *Order to Show Cause for a Preliminary Injunction with Temporary Restraining Order* (the “2016 TRO”). Pursuant to the 2016 TRO, Ware and Travana were enjoined from “using, referencing, or relying on any of Fareportal’s trade secrets and confidential and proprietary information . . . .” Further, the court also scheduled an order to show cause for October 5, 2016 on why a preliminary injunction should not be granted on the following:

- a. Enjoining Ware from working at Travana, or any other competitor of Fareportal, for one ( 1) year from today;
- b. Enjoining Ware from working with any former Fareportal employees, or soliciting any of Fareportal’s employees or customers, for three (3) years from today;
- c. Enjoining Ware, Travana, and their employees, officers, agents, subsidiaries or affiliates from using, referencing, or relying on any trade secrets and confidential and proprietary information misappropriated from Fareportal;
- d. Ordering Ware, Travana, and their employees, officers, agents, subsidiaries or affiliates, to return to Fareportal all trade secrets and confidential and proprietary documents and information (including electronic copies of such information) that were transmitted or removed from Fareportal’s premises;
- e. Permitting discovery to proceed by Fareportal on an expedited basis; and
- f. Ordering an attorney-supervised inspection of all computers, including hard drives and mobile storage devices in Defendants’ possession, custody or control, including but not limited to, Ware’s personal computer, Travana’s computer network and systems, and any computers used by Ware in the course of his employment with Travana.

31. Ware is not the first former Fareportal employee that Travana has poached. Travana currently employs at least four other former Fareportal employees – most notably, Andre Azer (“Azer”) and Seyalioglu, both of whom executed employment agreements similar to Ware’s Agreement, and one of which was employed by the Debtor.

32. Specifically, on or about July 8, 2016, Fareportal learned that Azer and Seyalioglu had commenced employment at Travana. Fareportal continues to investigate whether Azer,

Seyalioglu or any other former Fareportal employees have breached their post-employment obligations to Fareportal on behalf of Travana.

33. It is my understanding that Fareportal has learned that Travana is actively targeting certain other current Fareportal employees to assist it in the design and launch of its new OTA, and that Ware, Azer, Seyalioglu, and potentially others, have been contacting current Fareportal employees in an attempt to entice them to resign from their employment at Fareportal and join Travana and is actively recruiting software engineers trained in the .NET Framework in order to further target Fareportal's Trade Secrets.

34. Fareportal has learned that Travana is actively targeting certain other current Fareportal employees to assist it in the design and launch of its new OTA, and that Ware, Azer, Seyalioglu, and potentially others, have been contacting current Fareportal employees in an attempt to entice them to resign from their employment at Fareportal and join Travana and is actively recruiting software engineers trained in the .NET Framework in order to further target Fareportal's Trade Secrets.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: August 24, 2016  
New York, New York

*/s/ Werner G. Kunz*  
Werner G. Kunz  
Chief Operating Officer, Fareportal, Inc.

**Exhibit 1**

**Exhibit 2**

**TRO Motion**

**Exhibit C**

**Document Requests**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

AIRFASTTICKETS, INC.,

Debtor.

Chapter 11

Case No. 15-11951 (SHL)

**FAREPORTAL'S FIRST SET OF RULE 2004 DOCUMENT REQUESTS**

Fareportal Inc. ("Fareportal"), by and through its undersigned counsel, submits the following request for production of documents pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedures:

**DEFINITIONS**

1. Wherever appropriate in this request, the singular form of any word includes the plural and vice versa, and the masculine form of a word shall be interpreted as feminine and vice versa.
2. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests all responses that might otherwise be construed to be outside their scope.
3. The terms "all," "any," and "each" shall be construed as encompassing any and all.
4. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
5. "Concerning" means relating to, referring to, describing, evidencing or constituting.
6. "Documents" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Fed. R. Civ. P.

34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

7. “Identify,” when referring to a person, shall mean to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

8. “Identify,” when referring to documents, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

9. “Information” shall be expansively construed and include, without limitation, facts, data, opinion, images, impressions, concepts and formulae.

10. “Person” means any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

11. “Relate to” or “relating to” any given subject shall mean any information or any document or documents that comprise, constitute, contain, embody, evidence, identify, reflect, state, refer to, deal with or are in any way pertinent to that subject, including but not limited to, documents concerning the preparation of other documents.

12. “Thing(s)” means any tangible object encompassed within the most inclusive definition of this term in any decision from a court in this or any other controlling jurisdiction, including but not limited to any tangible things that constitute or contain matters within the scope of Rule 26(b) of the Federal Rules of Civil Procedure.



13. “You” and “Your” means or refers to the Debtor Airfasttickets, Inc. and its directors, officers, employees, agents, independent contractors, subcontractors, attorneys, representatives, successors and assigns.

14. “AirTourist” means AirTourist, Inc. and its directors, officers, employees, agents, independent contractors, subcontractors, attorneys, representatives, successors and assigns.

15. “Sale Agreement” means the October 23, 2015 Purchase and Sale Agreement between Airfasttickets, Inc. and AirTourist, Inc.

16. “Transferred Source Code” means the source code and rights to source code identified in Paragraph 2 of Exhibit A to the Sale Agreement, as well as any source code housed on the servers identified in Paragraph 3 of Exhibit A to the Sale Agreement.

17. “Transferred Software” means all software (as defined in Section 1.1.6 of the Sale Agreement) set forth on Exhibit A to the Sale Agreement.

### **INSTRUCTIONS**

1. You shall produce all Documents, Things, and Information responsive to these requests that are in your possession, custody, or control, including all documents and things in the possession, custody, or control of your past or present agents, employees, companies, licensees, representatives, investigators, or attorneys.

2. Documents and Things shall be produced with sufficient information to identify the files or repositories in which such responsive Documents and Things are maintained in the normal course of business, including, for example, an index, key, code or other means of ascertaining the source of the produced Documents and Things.

3. All Documents that are produced in electronic format must be produced in native format. All Documents that are produced in electronic format should also include: (i) Group 4

“tiff” images and IPRO-ready LFP and OPT files; (ii) a Concordance delimited import file with boundaries; (iii) full text OCR, with OCR text files provided on a document level; and (iv) all meta data fields associated with each electronic document. Fareportal also requests that all spreadsheets created in Microsoft Excel or similar spreadsheet program be produced in their native format. Fareportal reserves the right to request that other Documents be produced in their native format if necessary. The following metadata fields are also to be produced with all documents produced in electronic format:

Field Name	Description
BEGDOC	The beginning bates number for a document. This represents the first page of any given document.
ENDDOC	
BEGATTACH	The beginning bates number for a family of documents. This represents the first page in each family (parent-child) relationship.
ENDATTACH	
APPNAME	Name of the application that opens the native file.
ATTACHCOUNT	The number of attachments any given item possesses.
ATTACHNAMES	List of files attached to an email.
ATTACHRANGE	The DOCID range for the family of items.
CUSTODIAN	Custodian name.
FROM	The name and email address of the individual who wrote the email.
TO	The complete list of all names and emails of all individuals contained in the “To” field of the email.
CC	The complete list of all names and emails of all individuals contained in the “CC” field of the email.
BCC	The complete list of all names and emails of all individuals contained in the “BCC” field of the email.
AUTHOR	The application recorded “author” field of a document.

SUBJECT	The subject of the email.
TITLE	The application recorded "title" field of a document.
SORTDATE	First use SENTDATE, then MODIFIEDDATE, then CREATEDATE of the parent item. Populated for all family members.
SORTTIME	First use SENTTIME, then MODIFIEDTIME, then CREATETIME of the parent item. Populated for all family members.
SENTDATE	The date captured by the mailstore as to when the email was sent.
SENTTIME	The time captured by the mailstore as to when the email was sent.
RECEIVEDDATE	The date captured by the mailstore as to when the email was received.
RECEIVEDTIME	The time captured by the mailstore as to when the email was received.
CALSTARTDATE	The application recorded date that a calendar item was scheduled to start.
CALSTARTTIME	The application recorded time that a calendar item was scheduled to start.
CALENDDATE	The application recorded date that a calendar item was scheduled to end.
CALENDTIME	The application recorded time that a calendar item was scheduled to end.
CREATEDATE	The application recorded date the file was generated.
CREATETIME	The application recorded time the file was generated.
MODIFIEDDATE	The application recorded date the file was last modified.
MODIFIEDTIME	The application recorded time the file was last modified.
PRINTDATE	The application recorded date the file was last printed.
PRINTTIME	The application recorded time the file was last printed.
FILETYPE	Description of type of document, i.e. Email, E-Doc.
FILEEXT	The extension of the file.
FILENAME	The name of the file.
FILEPATH	The path to the file, including pst storename and folders if item is from a PST.

FILESIZE	The size of any given item in kilobytes. This field includes parent emails as well.
MAILFOLDER	The name of the folder path within the parent mail store that contains the email.
MD5HASH	MD5 Hash of efile, or MD5 Hash of dedupe fields for email
MSGCLASS	Outlook Email - Mail item class (Note, Report, Meeting, etc.)
INTMSGID	The unique Internet message ID of an email. This is assigned in the email header and is not specific to the email application used.
ENTRYID	The unique mail identifier assigned by the mail application (pst or nsf) for every mail item.
HIDDEN_CONTENT	Yes/No field. Populate with YES for any documents that contain comments, speaker notes, track changes, etc.
NATIVEFILE	The relative path linking the document.
FULLTEXT	Relativity path linking the text file.

4. Whenever you are asked to produce Information or a Document that is deemed by you to be properly withheld from production for any reason, you shall provide a privilege log that will include listing such Information or Document by title or subject heading, date, author, person who signed the document, addressee and all recipients, and a statement of the grounds(s) asserted for withholding the document, including attorney-client privilege or work product privilege.

5. If you withhold any Information or any Document on the claim of attorney/client or work product privilege, identify the privilege claimed as well as each Communication (including oral Communications) and Document for which such privilege is claimed, together with the following information with respect to each such Communication and Document:

- a. Date;
- b. Sender;
- c. Addressee;
- d. Subject;

- e. The basis on which the privilege is claimed; and
- f. The names of persons to whom copies of any part of the Document were furnished, together with an identification of their employee and their job titles.

6. If you maintain that any Document or Thing requested by Fareportal has been destroyed, set forth the contents of the Document or Thing the date of its destruction and the name of the person who authorized its destruction.

7. Where an objection is made to a request, state all grounds upon which your objection is based.

8. The Documents, Communications, Things, and Information produced pursuant to this request are to be segregated and identified by the number of the request below to which are responsive, or are to be produced as they are maintained in the ordinary course of business.

9. Unless otherwise specified, these requests seek information and documents prepared during, or related to, the period of time from January 1, 2012 through the date of your response hereto, without regard to what date the information came into your possession.

#### **DOCUMENT REQUESTS**

1. All documents and communications relating to Your acquisition, creation or development of the Transferred Source Code.

2. All documents and communications relating to Your acquisition, creation or development of the Transferred Software.

3. All communications between You and AirTourist regarding the Transferred Source Code.

4. All communications between You and AirTourist regarding the Transferred Software.

5. All documents and communications concerning the sale of the Transferred Source Code.
6. All documents and communications concerning the sale of the Transferred Software.
7. The Transferred Source Code.
8. The Transferred Software.