

Malani J. Cademartori, Esq.
Michael Driscoll, Esq.
Eric Raphan, Esq.
SHEPPARD MULLIN RICHTER & HAMPTON, LLP
30 Rockefeller Plaza
New York, NY 10112
Tel: (212) 653-8700
Fax: (212) 653-8701

Counsel to Fareportal Inc.

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

In re:

AIRFASTTICKETS, INC.,

Debtor.

Chapter 11

Case No. 15-11951 (SHL)

**FAREPORTAL'S MOTION FOR ENTRY OF ORDER PURSUANT
TO 11 U.S.C. § 107(b) AND BANKRUPTCY RULE 9018 AUTHORIZING
THE FILING OF CERTAIN INFORMATION UNDER SEAL IN
CONNECTION WITH THE *EX PARTE* MOTION FOR ORDER
AUTHORIZING FAREPORTAL INC. TO (A) CONDUCT A
2004 EXAMINATION OF AIRFASTTICKETS, INC. AND (B)
SEEK RELATED DOCUMENT PRODUCTION**

Fareportal Inc. ("Fareportal"), by and through its undersigned counsel, Sheppard, Mullin, Richter & Hampton LLP files this motion (the "Motion") pursuant to section 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order, substantially in the form attached hereto as **Exhibit A**, (i) authorizing Fareportal to file under seal unredacted versions 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 "2004 Motion") and the Kunz Declaration (defined below), as the 2004 Motion and the Kunz Declaration contain information designated as confidential, commercial and/or trade secret

information; (ii) authorizing Fareportal to file a publically-available, redacted version of the 2004 Motion and the Kunz Declaration on the docket in these proceedings from which all confidential, commercial and/or trade secret information shall be redacted; and (iii) directing that the unredacted 2004 Motion and the Kunz Declaration shall remain under seal and not be made available to anyone other than the United States Trustee for the Southern District of New York, counsel for Airfasttickets, Inc., (“Airfasttickets” or “Debtor”), and any other party as determined or required by the Court. In support of this Motion, Fareportal respectfully represents and sets forth as follows:¹

Jurisdiction

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

2. The statutory predicates for the relief requested herein are section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018.

Background

3. On July 27, 2015, certain of the Airfasttickets’ creditors filed an involuntary petition against Debtor in the United States Bankruptcy Court for the Southern District of New York, seeking an order for relief under chapter 7 of the Bankruptcy Code. Dk. No. 1.

4. 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.

¹ Capitalized terms used but not otherwise defined herein have the meanings given to them in the 2004 Motion.

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

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

7. On November 24, 2015, the Bankruptcy Court entered a sale order approving the private sale of substantially all of the Debtor's assets to Travana, Inc. ("Travana"), formerly known as AirTourist, Inc.

8. On or about August 1, 2016, Fareportal became aware of the Debtor's chapter 11 bankruptcy proceedings through the commencement of litigation commenced by Fareportal against Travana for misappropriation of Trade Secrets (as defined in the 2004 Motion). Fareportal never received any previous notice or other solicitation in connection with the Debtor's bankruptcy proceedings or the sale.

9. On August 24, 2016, Fareportal filed a redacted version of the 2004 Motion. Attached in support of the 2004 Motion was the *Declaration of 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"). The 2004 Motion and the Kunz Declaration contain certain information that is confidential, commercial and/or trade secret information.

Relief Requested

10. By this Motion, Fareportal seeks entry of an order, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, (i) authorizing Fareportal to file under seal the 2004 Motion and the Kunz Declaration as they contain information designated as confidential, commercial and/or trade secret information; (ii) authorizing Fareportal to file a publically-available, redacted version of the 2004 Motion and the Kunz Declaration on the docket in these

proceedings from which all confidential, commercial and/or trade secret information shall be redacted; and (iii) directing that the unredacted 2004 Motion and the Kunz Declaration shall remain under seal and not be made available to anyone other than as set forth herein.

Basis for Relief

11. Pursuant to section 107(b) of the Bankruptcy Code, the Court may authorize Fareportal to file certain portions of the 2004 Motion and the Kunz Declaration under seal. Specifically, section 107(b) provides, in pertinent part, that “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may – (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information” 11 U.S.C. § 107(b).

12. Bankruptcy Rule 9018 establishes the procedure by which a party in interest may obtain a protective order authorizing the filing of a document under seal pursuant to section 107(b). Bankruptcy Rule 9018 provides, in pertinent part, that “[o]n motion or its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information”

13. Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 are designed to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003). “When the requirements of Rule 9018 are satisfied, the authority to issue the resulting order is broad [and a Court may issue] ‘any order which justice requires.’” *Id.* at 724.

14. Once the Court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in section 107(b), the Court “is *required* to protect a requesting interested party and has no discretion to deny the application.”

Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 27 (2d Cir. 1994). Importantly, commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *Id.* at 28.

15. In the Second Circuit, Courts have held that section 107(b) “establishes the exception to the general rule that court documents are open for public inspection.” *Id.* at 27 (citing *In re Orion Pictures Corp.*, 1993 WL 330065 1993 U.S. Dist. LEXIS 111734, at *2 (S.D.N.Y. Aug. 25, 1993)). Under this exception, an interested party need only show that the information it seeks to seal is “‘confidential’ and ‘commercial’ in nature.” *Id.* Commercial information is defined as information that would cause “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *Id.* (citation and internal quotation marks omitted). Furthermore, the commercial information “need not . . . be the equivalent of a trade secret” to warrant protection under this exception. *Id.* at 28.

16. There is ample justification to file the 2004 Motion and the Kunz Declaration under seal. Fareportal is a counterparty to a certain agreement whose very existence is confidential (the “Agreement”) and the subject matter of which is germane, if not central, to the relief sought in the 2004 Motion. Specifically, the Agreement contains confidential information and terms that are commercially sensitive, proprietary and highly confidential in an industry that is subject to intense competition. In an effort to reduce the amount of information that would be sealed, Fareportal seeks to redact only those portions of the 2004 Motion and the Kunz Declaration that contains references to the confidential Agreement. Based on the foregoing, the Debtors submit that there is ample justification for filing the 2004 Motion under seal.

No Previous Request

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

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
Malani J. Cademartori, Esq.
Michael Driscoll, Esq.
Eric Raphan, Esq.
30 Rockefeller Plaza
New York, New York 10112
Tel: (212) 653-8700
Fax: (212) 653-8701
E-mail: mcademartori@sheppardmullin.com
eraphan@sheppardmullin.com

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)

(Jointly Administered)

**ORDER AUTHORIZING FAREPORTAL TO FILE UNDER SEAL CERTAIN
PORTIONS 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**

Upon the motion (the “**Motion**”),² of Fareportal (“**Fareportal**”), pursuant to section 107(b) of the Bankruptcy Code and Rule 9018 of the Bankruptcy Rules, for entry of an order (i) authorizing Fareportal to file under seal unredacted versions 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 “2004 Motion”) and the Kunz Declaration, as the 2004 Motion and the Kunz Declaration contain information designated as confidential, commercial and/or trade secret information; (ii) authorizing Fareportal to file a publically-available, redacted version of the 2004 Motion and the Kunz Declaration on the docket in these proceedings from which all confidential, commercial and/or trade secret information shall be redacted; and (iii) directing that the unredacted 2004 Motion and the Kunz Declaration shall remain under seal and not be made available to anyone other than as set forth herein; and it appearing that the relief requested in the Motion is appropriate and in the best interests of Fareportal, the Debtor’s creditors and other parties in interest; the Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334; this proceeding is a core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation thereon, good and sufficient cause appearing therefore and

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Fareportal is authorized to file the 2004 Motion and the Kunz Declaration under seal pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018. The filing under seal shall remain under seal and confidential, and no such information shall be made available to anyone, other than as set forth in this Order.
3. The unredacted 2004 Motion and the Kunz Declaration shall be made available by Fareportal, on a confidential basis, only to the Court, the United States Trustee, and counsel to Airfasttickets. The unredacted 2004 Motion and the Kunz Declaration shall not be made available to the general public.
4. This Order is without prejudice to the rights of any party in interest to seek to make public any portion of the pleadings and/or documents filed under seal pursuant to this Order.
5. Fareportal shall file an unredacted copy of the 2004 Motion and the Kunz Declaration containing the confidential information with the Clerk of this Court under seal in an envelope, clearly indicating that the same has been filed under seal by order of the United States Bankruptcy Court for the Southern District of New York and may not be unsealed until and unless permitted by further order of the Court; and a courtesy copy of the 2004 Motion should be provided to Chambers. The unredacted 2004 Motion shall be disposed of at the conclusion of this chapter 11 case.

6. Any party permitted access to the 2004 Motion and the Kunz Declaration shall not share any information contained in such documents with any third party, and any party found to have violated these conditions shall be subject to sanctions for violation of this Order.

7. The requirements set forth in Local Rule 9013-1(b) are satisfied.

8. Fareportal is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

9. This Court shall retain jurisdiction to hear and determine all matters arising from and/or related to the implementation, interpretation and/or enforcement of this Order.

Dated: New York, New York
_____, 2016

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE