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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)

**RESPONSE TO FIRST OMNIBUS OBJECTION TO CLAIMS OF THE LIQUIDATING
TRUST OF AIRFASTTICKETS, INC. TO CERTAIN PROOFS OF CLAIM (AMENDED
AND SUPERSEDED CLAIMS, CLAIMS TO BE RECLASSIFIED AND/OR REDUCED,
AND NO LIABILITY CLAIMS)**

Fareportal Inc. (“Fareportal”), by and through its undersigned counsel, Sheppard Mullin Richter & Hampton, LLP, files this response (the “Response”) to the *First Omnibus Objection Of The Liquidating Trust Of Airfasttickets, Inc. To Certain Proofs of Claim (Amended and Superseded Claims, Claims To Be Reclassified And/Or Reduced, And No Liability Claims)* [Dk. No. 280] (the “Objection”). In support of this Response, Fareportal respectfully states as follows:

PRELIMINARY STATEMENT

The Liquidating Trustee has asserted a somewhat misguided form objection to Fareportal’s unliquidated claim that must fail on the record created in this case with respect to the crux of the claim at issue. Specifically, the Liquidating Trustee has asserted a “books and records” objection to the Fareportal claim, thereby apparently basing the requested expungement

on the same documentation that utterly failed to identify Fareportal as a contract counterparty, party to a major pre-petition litigation with the Debtor, and an obvious party in interest to the Debtor's bankruptcy proceedings. Moreover, to assert, alternatively, that there is "inadequate documentation" for the claim in light of the agreement between the parties and the ample record in these cases regarding Fareportal's positions and potential claims, is simply untenable.

Ultimately, Fareportal's claim goes to the heart of these cases and seeks to uncover what transpired between the Debtor and Travana in the sale process and what may, in the process, have been hidden from the Court and other parties in interest. Fareportal has, time and again, established and explained the facts and issues underlying the relief sought by it in these cases and which ultimately lay the basis for the filed claim, including the fact that Fareportal has found itself having to continuously protect against a pattern of misappropriation and other illegal employment of Fareportal's trade secrets and employees, first, by the Debtor and, now, by Travana, as the Debtor's successor in both business and personnel.

While Fareportal has heeded the Court's suggestions and positions in connection with Fareportal's 2004 Motion by commencing a pointed action against Travana and others, and has thereby taken active steps to assess whether it not only has a claim against the Debtor, but a valid and compelling reason to overturn the bankruptcy sale for serious illegal activity undertaken by the parties, Travana and the Debtor's estate continue to try to shut Fareportal's inquiries down.

Most recently, these efforts have come in tandem and in the form of (a) Travana affirmatively raising the Sale Order (defined below) as a shield for any liability in connection with the transfer of potentially misappropriated trade secrets to it by the Debtor, and (b) the Debtor's estate simultaneously seeking, through the Objection, to shut Fareportal out of this venue by expunging a claim that clearly is meant to preserve Fareportal's rights with respect to

the sale issues. Given the serious allegations made and the actions undertaken by Fareportal to uncover the truth, Fareportal respectfully asserts that expunging its claim would fly in the face of equity and could have the effect of inadvertently sanctioning what may have been a hidden, albeit serious, abuse of the bankruptcy process.

BACKGROUND

A. General Background

1. On July 27, 2015, certain creditors of Airfasttickets, Inc. (the “Debtor”) filed an involuntary petition against the Debtor 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].

2. 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)*. [Dk. No. 10]. On October 28, 2015, the Bankruptcy Court entered an order converting the case to a case under chapter 11 of the Bankruptcy Code. [Dk. No. 28]. Thereafter, the Debtor managed its affairs as a debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

3. On October 13, 2016, the Court held a hearing on confirmation of the *Debtor’s Second Amended Chapter 11 Plan of Liquidation* (the “Plan”). October 26, 2016, the Court entered the *Findings of Fact, Conclusions of Law and Order Confirming the Debtor’s Second Amended Chapter 11 Plan of Liquidation* (the “Confirmation Order”) [Dk No. 251].¹ Attached

¹ The Confirmation Order includes the following language at Paragraph J: “The Fareportal Limited Objection was resolved and withdrawn on the record before the Court at the Confirmation Hearing based on the Debtor’s agreement to clarify the release and discharge or injunction provisions of the Plan, as set forth in this Confirmation Order and as follows: ‘For the avoidance of doubt, nothing in this Order or the Plan shall or shall be deemed to, release, discharge, or act as an injunction in favor of Travana, Inc., any director or officer of Travana, Inc. or any former director or officer of the Debtor.’”

to the Confirmation Order was the Liquidating Trust Agreement approved by the Court, which identified Adam Meislik as the Liquidating Trustee (the “Trustee”) of the Liquidating Trust.

4. On December 2, 2016, the Debtor’s Plan became effective and, pursuant to the Plan, the Debtor assigned and transferred absolutely and unconditionally to the Liquidating Trust all remaining assets of the Debtor and its estate, including Cash, Causes of Action, and Avoidance Actions (all as defined in the Plan). Further, under section 5.2 of the Plan, the Trustee was empowered to oversee the claims resolution and objection process, including without limitation, the ability to object to, seek to subordinate, compromise, or settle any or all claims against the Debtor.

B. Sale Process

5. On October 26, 2015, the Debtor 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].

6. As set forth in the Sale Motion, the Debtor sought approval of the sale of substantially all of its intellectual property and software and certain related assets (the “Property”) to Travana, Inc. (formerly known as AirTourist, Inc., “Travana”), 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.

7. On November 24, 2015, the Bankruptcy Court entered an order approving the Sale Motion (the “Sale Order”). [Dk. No. 65].

C. Fareportal Never Received Notice of the Bankruptcy Proceeding

8. Fareportal never received notice of the Debtor's bankruptcy proceedings, including without limitation, of the involuntary petition, the conversion of the case to chapter 11, the Sale Motion, Sale Order or the deadline for filing of proofs of claim against the Debtor, despite the fact that Fareportal and the Debtor have a history going back to at least 2013.

9. Specifically, on February 22, 2013, Fareportal commenced a civil action by filing a complaint against the Debtor, Ahmet Seyalioglu ("Seyalioglu"), and Anna-Lisa Ford ("Ford," and together with the Debtor and Seyalioglu, the "Debtor Defendants"), in the Supreme Court of New York, New York County, Index No. 650587/2013 (the "2013 Action"). The complaint filed in the 2013 Action alleged, inter alia, that (i) the Debtor 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) the Debtor employed Seyalioglu and Ford in violation of those agreements.

10. Ultimately, Fareportal and the Debtor entered into a confidential agreement (the "Agreement"), which ended the 2013 Action.²

² The Agreement was submitted to the Court under seal in connection with Fareportal's *Ex Parte Motion For Order Authorizing Fareportal, Inc. To (A) Conduct A 2004 Examination Of Airfasttickets, Inc. And (B) Seek Related Document Production*, including 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 filed on August 24, 2016 [Dk. No. 196] (the "2004 Motion"), and pursuant to the Court's 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 entered on August 30, 2016 [Dk. No. 205].

11. Despite the ongoing obligations owed by the Debtor to Fareportal as outlined in the Agreement (and discussed in the unredacted version of the 2004 Motion) and the Debtor's past dealing with and knowledge of the specific interests of Fareportal, Fareportal was never noticed of any of the bankruptcy proceedings. In fact, Fareportal did not learn about the Debtor's bankruptcy until on or around August 1, 2016, in connection with a lawsuit commenced against Travana by Fareportal (described further below) for activity very similar to the activity undertaken by the Debtor and complained of in the 2013 Action.

D. Fareportal's 2004 Motion

12. After learning of the Debtor's bankruptcy proceedings and the entry of the Sale Order in early August 2016, Fareportal filed the 2004 Motion seeking authority to conduct an examination of the Debtor and seeking the production of certain documentation related to and identifying, with specificity, the Property sold to Travana under the Sale Order. The specific aim of the 2004 Motion was to uncover whether the Property, in fact, included property infringing on Fareportal's intellectual property or that was otherwise misappropriated from Fareportal by the Debtor.

13. On September 14, 2016, the Court held a hearing on the 2004 Motion (the "September 14 Hearing").

14. At the September 14 Hearing, the Court indicated its view that Travana would be better positioned to provide information relating to the Property sold as part of the Sale Order because of the representation of the Debtor that as of the September 14 Hearing all, or almost all, of the Debtor's Property had been transferred to Travana and was "not readily accessible information" for the Debtor. *See* September 14 Hearing Tr. 26:25

to 27:21. A true and correct copy of the September 14 Hearing Transcript is attached hereto as Exhibit A.

15. The Court further stated at the September 14 Hearing that:

. . . if you reach the point where someone says you have our – it's our source code, some judge says it is their source code, now we have to understand whether the sale order changes the game. I fully expect that I will see all you nice people again because that's the way it works. To understand the sale order in a bankruptcy case, to understand the plan in a bankruptcy case, people come back here. That's the way it works.

Hr'g Tr. 30: 4-14.

. . .

I will reiterate if there is any issue about the sale order, it comes down to whether the sale order is the case cracker, to quote my cousin Vinny, then we'll be back here. But I'm not hearing anything that says that that's the first place you're going in that litigation. That sounds like far off in the distance. If it comes up, you're going to be back here . . .

Hr'g Tr. 45: 11-22.

16. On September 23, 2016, the Court entered the order denying the 2004 Motion (the "September 23 Order"). [Dk. No. 229].

17. On October 3, 2016, Fareportal filed a proof of claim in the amount of not less than \$10 million which was assigned Claim No. 86 (the "Fareportal Claim") arising from (i) breach of the Agreement, (ii) prospective rejection of the Agreement pursuant to the Plan, and (iii) the sale of Fareportal's trade secrets, including without limitation, source code, to Travana, on or about November 24, 2015. The Fareportal Claim specifically provided that, in accordance with the Court's comments and suggestions at the September 14 Hearing, "the amount and liability of the Debtor for the amounts asserted herein shall be proven at a later date and through an appropriate proceeding on the issues, following further

discovery.” A true and correct copy of the Fareportal Claim, as filed, is attached hereto as Exhibit B.

E. Fareportal’s Federal District Court Action

18. Based, in part, on the Court’s comments at the September 14 Hearing, on December 22, 2016, Fareportal initiated an action against Travana, Seyalioglu, Ware (defined below) and Nishith Kumar a/k/a Nishith Varma (“Varma” and together with Seyalioglu (in this case) and Ware, the “Travana Employees”), in the United States District Court for the Southern District of New York, alleging, among other things, copyright infringement, violation of the Computer Fraud and Abuse Act, violation of the Defend Trade Secrets Act and breach of fiduciary duty and duty of loyalty (the “Travana Copyright Action”).³ A true and correct copy of the complaint (the “Complaint”) filed in the Travana Copyright Action is attached hereto as Exhibit C.

19. The Complaint includes detailed allegations regarding how Travana, Seyalioglu and others are historically and inextricably linked to the Debtor, as well as the transfer of the Debtor’s Property to Travana through the bankruptcy case. The Complaint further details Travana’s scheme to misappropriate Fareportal’s trade secrets, including by accomplishing an uncontested and private transfer of all of the Debtor’s Property through the Sale Motion, which Fareportal has reason to believe included misappropriated and potentially infringing intellectual property and trade secrets of Fareportal, and the illegal

³ The Travana Copyright Action is separate from the action commenced by Fareportal on August 1, 2016, against its former employee Jason Ware (“Ware”) and Travana, in the Supreme Court of New York, New York County, Index No. 653995/2016 (the “2016 Action”), and includes different allegations and causes of action against Travana, as well as the other defendants named therein. The 2016 Action alleges, 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. The 2016 Action is currently in the discovery phase.

solicitation and hiring of Fareportal's key employees, much as the Debtor before it. *See* Complaint ¶¶ 22–35.

20. The Complaint further alleges that Travana's online travel agency "Janbala", has the same look, feels and function as Fareportal's online travel agency, and that the source code for Janbala, among other operating systems, could only have been launched by utilizing source code misappropriated from Fareportal by the Debtor and then either transferred to Travana by the Debtor and/or directly through Seyalioglu who has been employed by each of Fareportal, the Debtor and, now, Travana. *See* Complaint ¶¶ 36–61.

21. The deadline for Travana and each of the Travana Employees (collectively, the "Travana Defendants") to answer or otherwise respond to the Complaint was extended to February 6, 2017, by agreement of the parties to the Travana Copyright Action. Each of the Travana Defendants answered the Complaint on or before February 6, 2017. In each of the answers filed by Travana, Seyalioglu and Varma, they asserted, as an affirmative defense to the allegations in the Complaint, that Fareportal's "claims are barred, in whole or in part, by the bankruptcy [S]ale [O]rder pursuant to which Travana purchased certain assets of Airfasttickets, Inc." Accordingly, and as expected, Travana and its employees are now using the Sale Order as a shield.

22. As a result of the September 23 Order, the Travana Copyright Action is now Fareportal's best and, maybe, only available vehicle through which it can seek discovery in connection with the Property transferred to Travana by the Debtor under the Sale Order.⁴

⁴ As outlined in the 2004 Motion, the 2016 Action is based on facts that occurred almost 7 months after the consummation of sale of the Property to Travana and, by Fareportal's own admission, in connection with a former Fareportal employee (or employees) that, at least to Fareportal's knowledge, never worked for the Debtor nor had any involvement in the sale of the Property to Travana. Accordingly, the allegations in the 2016 Action and resulting discovery are unlikely to include or uncover whether the Property transferred by the Debtor to Travana, (footnote continued)

The outcome of the Travana Copyright Action and the discovery to be sought therein will not only be the basis for liquidating the amount of the Fareportal Claim, but will also determine whether all parties will, in fact, need to be before this Court on the effect and effectiveness of the Sale Order, as was suggested during the September 14 Hearing.

F. The Claim Objection

23. In its Objection to the Fareportal Claim, the Trustee lists Fareportal's Claim as a "No Liability Claims" on the Trustee's assertion that "the Debtor has no liability for these claims based on the Debtor's books and records or the Proofs of Claim and documentation provided by the affected Claimants." Objection, ¶ 20(c).

24. The Trustee's specific objection to Fareportal's Claim as provided for on Exhibit A thereto states that "[t]he Claimant has not provided supporting documentation or damages computations for its assertions. Further, there is no basis for liability to this Claimant, according to the Debtor's books and records." Objection, Ex. A.

RESPONSE

25. Fareportal objects to the Trustee's attempts to expunge the Fareportal Claim and disputes the characterization of the Fareportal Claim as a "No Liability Claim" for two main and fairly obvious reasons: (1) the assertion that Fareportal's Claim is not reflected in the Debtor's books and records is only further proof that the Debtor's books and records are incomplete, inaccurate and potentially kept, at least with respect to Fareportal, so as to avoid liability to or otherwise notify Fareportal of the case and allow Fareportal the opportunity to protect its interests, and (2) the Trustee has been on notice, since before the filing of the Fareportal Claim, of the basis of such claims and the fact that discovery of

including through the efforts of Chen and Seyalioglu, as officers of both the Debtor and now Travana, included source code belonging to or infringing on Fareportal's trade secrets.

what was sold by the Debtor to Travana is the key to whether the Fareportal Claim can either be substantiated or ultimately expunged.

26. The Debtor's assertion that it has no liability to Fareportal based on its books and records is both circular and self-fulfilling. There is no dispute that Fareportal and the Debtor were parties to a fairly contentious litigation and that there is an Agreement between the parties, under which the Debtor had continuing obligations.⁵ Thus, at the time the Debtor's case was converted to chapter 11, it was a party to an existing and enforceable agreement with Fareportal; which alone is a basis for Fareportal to file a claim against the Debtor.

27. There is also no dispute that the same books and records that the Debtor now likely relies upon as a basis for its Objection, resulted in the failure to notice Fareportal of the bankruptcy case or any proceedings in the bankruptcy case at all. As a result, it appears the Debtor's books and records, at least inasmuch as they relate to Fareportal, are highly flawed.

28. Moreover, it should not be surprising that, given the allegations made by Fareportal in the 2013 Action, the bases asserted for Fareportal's discovery requests in the 2004 Motion and the allegations now asserted in the Travana Copyright Action as they relate to the sale and transfer of Property from the Debtor to Travana, the Debtor may not have recorded such potential liabilities in its books and records. One would not expect that an entity would record its illegal activities, such as knowledgeable infringement and misappropriation of competitors' trade secrets, in their books and records. Thus, the "books and records" objection is illusory.

⁵ See 2004 Motion (unredacted version), ¶¶ 9-12.

29. With respect to the “supporting documentation” portion of the Trustee’s Objection to the Fareportal Claim, each of the pleadings filed in these cases, including without limitation, the 2004 Motion, the proof of claim itself, and Fareportal’s *Limited Objection Of Fareportal Inc. To The Debtor’s First Amended Chapter 11 Plan Of Liquidation* filed on October 6, 2016 [Dk. No. 232] provide ample documentation and explanation for the basis of the unliquidated claim ultimately filed by Fareportal.

30. In addition, Fareportal moved as quickly as possible in commencing a well-founded and carefully drafted action against Travana which would, in part, serve as the vehicle through which Fareportal could finally discover whether the Debtor transferred Fareportal’s source code or other infringing or misappropriated trade secrets to Travana, in compliance with the suggestions of this Court at the September 14 Hearing. The Travana Copyright Action directly addresses these issues and seeks to bring the matter back to this Court, as soon as possible, and as suggested by the Court, in the event that the Debtor and Travana, including its common officers and employees, abused the bankruptcy sale process and accomplished the illegal transfer of misappropriated or infringing intellectual property thereby.

31. Notwithstanding the existence of ample documentation as already filed in these proceedings, Fareportal now provides the Complaint filed in the Travana Copyright Action, which was commenced after the filing of the Fareportal Claim, as further supporting documentation for the Fareportal Claim. The Complaint not only includes detailed facts and allegations regarding the Debtor’s sale of allegedly infringing intellectual property, including source code and trade secrets to Travana, but also provides a further basis for the unliquidated amounts sought in the Fareportal Claim.

32. Finally, regardless of the asserted basis for objecting to the Fareportal Claim, and in light of the fact that the Travana Defendants are using the Sale Order as a shield, Fareportal asserts that expunging the Fareportal Claim now, and before Fareportal can discover whether the Debtor and Travana illegally and inequitably used the bankruptcy process to transfer Fareportal's misappropriated trade secrets to Travana, would irreparably harm Fareportal, and may cause significant harm to the Debtor's creditors.

33. Fareportal originally sought discovery in these cases in light of the Sale Order and knowing that Travana would use the Sale Order as a shield for any wrongdoing. After the September 14 Hearing and taking into consideration the comments of the Court and position of the Debtor, Fareportal commenced the Travana Copyright Action in order to seek appropriate discovery from Travana. Fareportal is now subject to the schedule of the District Court, but will move as quickly as possible to uncover whether or not Travana received Fareportal's property as part of the Sale Order. In the event that it is discovered that the Debtor and Travana misused the process and hid from the Court that the source code and/or other intellectual property sold was never actually property of the Debtor's estate, the sale would have to be reviewed and Fareportal would seek to unwind such sale and assert any other rights available to it, with respect to its property. Travana, through its answer to the Complaint has made it clear that it intends to deflect any liability it may have as a result of the Travana Copyright Action by looking to the bankruptcy sale process and the effect of the Sale Order. If the Fareportal Claim is expunged, Fareportal may be barred from seeking redress for what may be not only a devastating misappropriation of its trade secrets, but a serious abuse and twisting of the bankruptcy process and resulting, albeit unintended, sanctioning of an illegal sale.

34. Accordingly, and put simply, allowing the Debtor to now expunge the Fareportal Claim after all the process employed in order to serve the intentions of Fareportal to simply uncover the truth and seek the relief to which it may have rights, and in which all parties should be interested, would be inequitable.

WHEREFORE, Fareportal respectfully requests that the Court deny the Debtor's request to expunge the Fareportal Claim and overrule the Debtor's Objection as it relates to the Fareportal Claim, and grant such other and further relief as it deems just and proper.

Dated: February 8, 2017
New York, New York

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By: /s/ Malani J. Cademartori

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EXHIBIT A

In Re:
AIRFASTTICKETS, INC.
Case No. 15-11951-shl

September 14, 2016

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 15-11951-shl

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In the Matter of:

AIRFASTTICKETS, INC.,

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 14, 2016

10:32 AM

B E F O R E:

HON. SEAN H. LANE

U.S. BANKRUPTCY JUDGE

1 Doc. #189 (Arent fox) Second Application for Interim
2 Professional Compensation and Reimbursement of Expenses for
3 Arent Fox LLP, Debtor's Attorney.

4
5 Doc. #190 (Richards Layton...) Second Application for Interim
6 Professional Compensation and Reimbursement of Expenses for
7 Richards, Layton & Finger, P.A., Debtor's Attorney.

8
9 Doc. #191 (BSW & Associates) Second Application for Interim
10 Professional Compensation for BSW & Associates, Accountant.

11
12 Doc. #192 (Wright Ford ...) Application for Final Professional
13 Compensation and Reimbursement for Expenses for Wright Ford
14 Young & Co., Accountant.

15
16 Doc. #196 Ex Parte Application for FRBP 2004 Examination //Ex
17 Parte Motion for Order Authorizing Fareportal, Inc. to (A)
18 Conduct a 2004 Examination of Airfasttickets, Inc. and (B) Seek
19 Related Document Production.

20
21 Doc. #215 (Seal) Motion to File Under Seal//Fareportal's Motion
22 for Entry of Order Pursuant to 11 U.S.C. §107(b) and Bankruptcy
23 Rule 9018 Authorizing the Filing of Certain Information Under
24 Seal in Connection with the Reply to the Objections of
25 Airfasttickets, Inc. and Travana, Inc. to the Ex Parte Motion

1 for Order Authorizing Fareportal, Inc. to (A) Conduct a 2004
2 Examination of Airfasttickets, Inc. and (B) Seek Related
3 Document Production.
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1 P R O C E E D I N G S

2 THE COURT: So let me get appearances.

3 MR. UTLIK: Good morning, Your Honor. George Utlik
4 from Arent Fox, counsel for the debtor. Along with me in court
5 is Michael Cryan, from Arent Fox as well.

6 THE COURT: We'll work this way across the room, so --

7 MR. MATSUMOTO: Brian Matsumoto for the Office of the
8 United States Trustee.

9 MR. STEPHENS: Timothy Stephens from Morgan Lewis for
10 the objector, Travana, Inc.

11 MS. CADEMARTORI: Malani Cademartori, Sheppard,
12 Mullin, Richter & Hampton on behalf of Fareportal, Inc. I also
13 have with me Bob Friedman and Michael Driscoll.

14 THE COURT: All right, anyone else?

15 MR. SCHWARZ: Doug Schwarz from Morgan Lewis, Your
16 Honor, with Mr. Stephens.

17 THE COURT: All right. Good morning to you all. So
18 we have a number of matters on. We have a couple of
19 applications for interim compensation. And I did get courtesy
20 copies of those. I'm good to go. We also have a couple of
21 other things, a 2004 issue, and a related motion to seal. I
22 don't know if there's any preliminary matters or updates in the
23 case that you want to discuss before we leap into it, and what
24 you want to handle first.

25 MR. UTLIK: Good morning, Your Honor, George Utlik

1 from Arent Fox, counsel for the debtor. There's really two
2 matters here: the fee applications filed by the debtor, the
3 three interim fee applications by my firm, Richards, Layton &
4 Finger, special counsel, and the financial advisor, as well as
5 the first and final fee application by the debtor's accountant.

6 Separately is the Fareportal's motions, and I guess
7 the movant will address them in time. If Your Honor doesn't
8 mind, I guess I'd like to start with the fee applications.

9 THE COURT: Sure.

10 MR. UTLIK: There has been no objection filed. The
11 only informal objection, if you will, or just a host of issues
12 that we addressed with the Office of the United States
13 Trustee -- we resolved each of those by way of agreeing to
14 volunteer reductions. And I'll provide details with respect to
15 that. Arent Fox agreed to reduce its expenses by \$19.11, as
16 well as its legal fees in the total amount of 12,500 dollars.

17 THE COURT: It's always helpful to know what the
18 issues are that were --

19 MR. UTLIK: Sure.

20 THE COURT: -- the subject of that, just so I --

21 MR. UTLIK: Some of the issues that were flagged were
22 like lunch by a paralegal, nineteen dollars. We had to write
23 that off. The other one, in connection with the time spent on
24 fee applications, I think it was in excess of six percent. So
25 to address that issue, as well as time billed for looking up

1 local rules, (indiscernible) rules to comply with, like some
2 redactions, for instance. Time spent redacting some of the
3 MORs filed in this case, as well as fee statements filed by
4 professionals in this case. These were done for -- in
5 connection with litigation. Some of the time entries we felt
6 that were -- better be redacted for confidentiality reasons.
7 We had to then write off that time, so that is about 5,000
8 dollars.

9 Noted times was -- another matter that was flagged by
10 the Office of the U.S. Trustee was some vague or lumped time
11 entries, and we agreed to voluntarily write off 7,500 dollars
12 in connection with those vague entries. Again, those primarily
13 were for the purpose of ongoing litigations, and they were
14 described sort of in this vague mode to protect
15 confidentiality, to not disclose, obviously, what we are doing
16 and strategizing, et cetera. So those were the issues with the
17 Arent Fox fee applications.

18 Brian Weiss, the financial advisor for the debtor also
19 agreed to take a volunteer reduction in the amount of 1,765
20 dollars. Those fees were reduced, I believe, in connection
21 with the creation of a claims registry by the financial
22 advisor, and the Office of the U.S. Trustee felt that that time
23 should be reduced by fifty percent, approximately, so that is,
24 in fact, fifty percent of the amount sought in connection with
25 that particular task.

1 Wright Ford Young is the accountant for the debtor.
2 They agreed to take a volunteer write off in their fees in the
3 amount of 2,100. That was basically the first and final fee
4 application. They already completed their services for the
5 estate.

6 The issues that were flagged by the Office of the U.S.
7 Trustee were basically vague time entries as well as lumped
8 time entries. Their total invoice was about 15,000 dollars, so
9 that's 25 -- 2,100 dollars that reflects sort of the compromise
10 reached in connection with those informal objections.

11 THE COURT: All right.

12 MR. UTLIK: And the last one is Richards, Layton &
13 Finger. The proposed reduction is 2,600 dollars in fees and
14 100 dollars in expenses. Unfortunately, I was not on the call,
15 present while the issues were discussed, so I don't know the
16 detail, but I presume that again reflects a compromise reached
17 by the firm with the Office of the United States Trustee, and
18 that represents the reductions agreed --

19 THE COURT: All right.

20 MR. UTLIK: -- between those parties.

21 THE COURT: Thank you. Anything from the U.S.
22 Trustee's Office?

23 MR. MATSUMOTO: No, Your Honor, that appears to be
24 consistent with the information I received with respect to the
25 last counsel. There were overhead charges and reviewing of

1 time entries that resulted in the agreed reduction.

2 THE COURT: All right. Let me just ask, because I did
3 see, and I had a question about -- it sounds like you've
4 resolved it -- the financial advisor and the claim registry.
5 And so I'm just curious what your thinking is there, in terms
6 of the context of the case, how your office approaches and what
7 views it has in that circumstance.

8 MR. MATSUMOTO: I'm sorry, Your Honor, I wasn't
9 involved in the discussions. In terms of the reduction
10 information I had is that there was concern about the amount of
11 charges that were being requested with respect to the
12 preparation of those charges, the claims as well as I guess
13 administrative efforts to download and I guess maintain those.

14 THE COURT: All right. Anybody else wish to be heard
15 on the applications that we're discussing here this morning?

16 I just wanted you to remind me because I know there's
17 a background to this. The special counsel, Richards, Layton &
18 Finger put in a request for compensation of about 15,000
19 dollars. And I know that there was special counsel for
20 litigation, and I think about almost -- about 8,400 of that was
21 for fee applications, but not here, but for somewhere else in
22 the Delaware Chancery Court.

23 And if you'd just give me a little bit of context. I
24 remember this being discussed earlier, and I confess, I just
25 couldn't remember enough of the details to give the context.

1 And it sounds like that's a lion share of this, simply because
2 of that's the order in which you do these things. And that
3 case is now at a conclusion, but it would just be helpful if
4 you'd just put that on the record.

5 MR. UTLIK: Sure, Your Honor. Richards, Layton &
6 Finger is counsel. They're located in Delaware. They're, in
7 fact, the special counsel for that purpose, because this case,
8 you may recall, was filed as an involuntary proceeding. Before
9 that, there was a receivership in the Delaware Chancery Court,
10 and Richards, Layton & Finger was primarily involved as lead
11 counsel for the debtor.

12 After that, after the involuntary case was filed,
13 Richards, Layton & Finger played a key role in connection with
14 the sale of the debtor's assets, so they actually were
15 participating in negotiating the asset purchase agreement, in
16 prosecuting the motion for the sale, et cetera.

17 Following that, they do continue their sort of
18 obligation to go back periodically to the Chancery Court and
19 report on the status -- provide status, provide letters also,
20 sort of follow what's going on in the bankruptcy case: some of
21 the issues dealing with sort of (indiscernible) policy, that
22 aspect, some of the Delaware law.

23 So we consult periodically on those issues. So as a
24 general matter, I suppose most of their fees are
25 actually in connection with their sort of Delaware

1 law, are all in Delaware court. The other one is
2 ongoing administration of the estate for their special
3 expertise in Delaware law.

4 THE COURT: All right. Anybody from that firm want to
5 be heard on that issue?

6 MR. UTLIK: I don't think I have anyone actually from
7 that firm.

8 THE COURT: All right. Yeah, thank you. I had a
9 general sense of that, but not the details. I couldn't
10 remember the details, so that's helpful to know.

11 All right, anything else that folks want to weigh in
12 on as to the applications? All right, based on the record in
13 front of me and given the changes to the requests that have
14 been made and put on the record here this morning, I'm happy to
15 approve the applications as amended of I guess the second
16 application for interim professional compensation of Arent Fox,
17 the second application of interim professional compensation and
18 reimbursement of expenses of Richards, Layton & Finger P.A.,
19 and second application of interim professional compensation BSW
20 & Associates as accountant, and the application for final
21 professional compensation and reimbursement of expenses for
22 Wright Ford Young & Co., as accountant.

23 Thank you. So we can move on to the 2004 examination
24 application, as well as the related -- I think it is the
25 related motion to seal.

1 MR. UTLIK: Yes, Your Honor. Thank you. I will
2 (indiscernible).

3 MS. CADEMARTORI: Good morning, Your Honor. For the
4 record, Malani Cademartori, Sheppard, Mullin, Richter & Hampton
5 on behalf of Fareportal, Inc.

6 Your Honor, we're here this morning, as you note, on
7 the Fareportal's motion for authority to conduct what I
8 consider very specific discovery related to the property of
9 Airfasttickets, under Rule 2004. It's a review of source code.
10 What we'd like is a review of source code, readable review of
11 source code and software, to ensure compliance with a specific
12 document.

13 Before I begin on the actual motion, Your Honor, I
14 wanted to just make sure that we were clear on some -- I guess,
15 housekeeping items. As you noted, there is a current sealing
16 motion with respect to Fareportal's replies to the objections
17 of Travana and the debtor. The previous sealing motion with
18 respect to the original 2004 motion, there was an order entered
19 on that. That's docket number 205, and as well our motion to
20 expedite for the 2004 motion has been adjudicated. That's at
21 docket 202.

22 Just would ask the Court, with respect to the sealing
23 motion, and respect to sealing in general, how the Court would
24 like us to proceed to the extent that the document needs to be
25 discussed. I can just refer to it as the document.

1 THE COURT: Yeah, I think normally counsel can avoid
2 having to seal anything. In the public courtroom, you can
3 refer to it -- you can make reference to pages and lines and to
4 specific information, so we can discuss it without putting
5 anything problematic on the record.

6 MS. CADEMARTORI: Right, and Your Honor, hopefully
7 the --

8 THE COURT: And so while you're discussing it, we
9 might as well address that motion. Is there any objection to
10 the motion to seal? I didn't see any on the docket. I don't
11 see anybody here rising. I'm going to grant it, given that it
12 seems to fall squarely within the confines of the rule allowing
13 for the protection of such confidential business information.
14 So that's sealed.

15 MS. CADEMARTORI: And Your Honor, just for the sake of
16 process, I will -- because I know Your Honor has read the
17 papers and so has everybody else, I will try to stay away from
18 discussing the specific document, unless the Court has any
19 questions, and then I will be very careful.

20 In addition, with respect to the original motion, we
21 included the declaration of Werner Kunz, who's in the courtroom
22 today. He's the chief operating officer of Fareportal, Inc.
23 And he's been with Fareportal, Inc. for over ten years. We
24 submitted that declaration, obviously, to substantiate the
25 facts and the document that underlie and underpin the motion.

1 And I would ask the Court if we could enter that into evidence
2 in order to substantiate that motion.

3 THE COURT: All right. Any objection? All right,
4 that's received. Thank you.

5 (Declaration of Werner-Georg Kunz was hereby received into
6 evidence as Fareportal's Exhibit, as of this date.)

7 MS. CADEMARTORI: Thank you, Your Honor. With respect
8 to Fareportal's 2004 motion, we're not here on a Travana
9 matter. We are here on matters squarely related to the debtor
10 and its property, clearly, its core property.

11 THE COURT: But we don't seem to be here for the
12 bankruptcy case. We seem to be here for another case. And I
13 almost was surprised this wasn't a motion to lift stay to seek
14 third-party discovery.

15 And now, you can say what's the difference, but that's
16 an important distinction in that there's case law cited in the
17 papers, and the case I usually up citing for it is the Enron
18 case, Judge Gonzalez's case from 2002 that deals with other
19 pending litigation. And so it really has to do with whether it
20 deals with the bankruptcy or it deals with another case.

21 And obviously, you have your other case, this
22 litigation and that's fine, but it really seems -- it seems to
23 me to be more in the nature of a motion to lift stay to say we
24 need information from you because we -- you have it, and we
25 need to deal with it in this other case, as opposed to there's

1 something going on in the bankruptcy case about the debtor's
2 assets, liabilities and as a creditor, or as an interested
3 party, we need to figure that out, whether we're filing a proof
4 of claim or to figure out our position on an issue in the case
5 or whether even to participate in the case. So is my
6 impression incorrect, and if so, why?

7 MS. CADEMARTORI: Your Honor, I respectfully assert
8 that your impression is incorrect. I think maybe we've made
9 the mistake of explaining the Ware action too much in the
10 papers. Yes, there is -- the fact is, is that we are bringing
11 this motion in the Bankruptcy Court at the same time as we are
12 advancing our action against Ware.

13 But the action against Ware is limited to actions
14 taken by Ware, which are decidedly after the sale of the
15 property to Travana by the debtor. In fact, I would position
16 have nothing to do with the sale of the property by the debtor
17 to Travana, but in fact, have to do with actions taken by Ware
18 and by Travana with respect to Ware, respect to a completely
19 different set of source code having to do with the loyalty
20 program.

21 And the only reason that they occur at the same time
22 is because it is only through the Ware action, and in our
23 figuring out what happened with Ware, who by the way, as far as
24 we know it, had nothing to do with the debtor at any point,
25 that we found out that there was, in fact, an Airfasttickets

1 bankruptcy.

2 I would state that we would not be able to seek
3 discovery in the Ware action with respect to what the debtor
4 sold to Travana. It is outside of the scope of that action
5 completely. And in fact, if you were to look at discovery and
6 the complaint, it has nothing to do with the debtor; it has
7 nothing to do with the transaction between the debtor and
8 Travana.

9 THE COURT: So what is it -- then what does it have to
10 do with? What is it that you're -- what's the anchor for the
11 request?

12 MS. CADEMARTORI: The anchor for the request is the
13 existence of the document, the entry into the document which
14 had continuing obligations.

15 THE COURT: Well, I don't mean it that way. What case
16 does it -- so if it doesn't deal with your pending litigation,
17 what does it deal with? Is it related to the bankruptcy? Are
18 you seeking it in connection with the bankruptcy, and if so,
19 how is it relevant to the bankruptcy?

20 MS. CADEMARTORI: It's relevant to the bankruptcy
21 because it has to do with the nature of the property that the
22 debtor sold, and it's relevant to whether or not we are, in
23 fact, a creditor and potentially the largest creditor, if the
24 property sold was, in fact, our misappropriated source code.

25 THE COURT: All right. Because the concern I always

1 have is when there's litigation going on between other parties
2 and they come in asking for information and to take discovery
3 in a 2004, of getting embroiled in other litigation, and the
4 sort of pending matters exception to 2004, which is otherwise
5 pretty broad, is pretty well established.

6 MS. CADEMARTORI: Your Honor, the fact (indiscernible)
7 is that if we are allowed to do what I consider very limited
8 discovery -- it's really just the readable format of the source
9 code and the software, and we're willing to talk about us,
10 meaning Fareportal, not actually looking at it, but having a
11 third party compare.

12 THE COURT: So you're talking about what was sold?

13 MS. CADEMARTORI: Exactly.

14 THE COURT: All right.

15 MS. CADEMARTORI: If it turns out that there is no
16 misappropriation, no infringement, then we walk away from this
17 case. We have no claims in this case. If, in fact, it turns
18 out that it was misappropriated source code or software, well,
19 it sort of changes everything in this case. It sort of changes
20 what was sold and whether it was allowed to be sold in the
21 first place.

22 That has nothing to do with the Ware litigation. That
23 Ware litigation continues no matter what. It is a completely
24 different set of facts. It is completely set of -- different
25 employee. It's a different action.

1 THE COURT: So the thing you're seeking is to know
2 what was sold and unlike most instances where it comes up in a
3 bankruptcy case, you're not talking about the asset purchase
4 agreement. You're talking about essentially the deliverable.
5 I don't know what -- let me ask you as a practical matter, in
6 terms of discovery. What does that mean?

7 MS. CADEMARTORI: Right.

8 THE COURT: I don't confess to be well versed enough
9 in source code in any way, shape, or form to understand what
10 that looks like.

11 MS. CADEMARTORI: And unfortunately, neither do I.
12 But my understanding is --

13 THE COURT: All right, so we'll muddle through it
14 together. But what does the discovery request look like?

15 MS. CADEMARTORI: My understanding is that what it
16 would require is basically either a digital or a readable --
17 even a printout on paper format of the source code, which
18 people who understand source code will be able to read and
19 decipher. I mean, the kind of thing that to you and I we
20 wouldn't know what it said on a piece of paper.

21 THE COURT: Does that have proprietary information
22 problems, in terms of the debtor saying well, we're not going
23 to share it with you because it's ours; it's not yours?

24 MS. CADEMARTORI: It may. And that's why we would
25 suggest that if we were entitled to the discovery we would --

1 and it would be just limited to those items, that we would have
2 a third party basically take our source code, which is
3 proprietary; take their source code, which is proprietary, and
4 compare them. And then neither side would be able to see the
5 other side's source code.

6 But this is what apparently happens all the time when
7 there are infringement cases. There's a third person who looks
8 at the stuff and says yes, it's infringing, or yes, it's the
9 same, or no, it's not, and go your separate ways. That's my
10 understanding. As with Your Honor, I don't purport to be
11 versed at all in what happens.

12 THE COURT: All right. So what else do you want to
13 tell me in connection with your application?

14 MS. CADEMARTORI: Well, maybe I would ask Your Honor
15 what would you like to know, because, frankly, I think we all
16 went to lengths to explain our positions in the papers. And I
17 did want to -- I'm glad that Your Honor asked the question
18 about the two actions, because they are, in fact, very
19 separate. And I think the crux of the objections is based on
20 that misunderstanding.

21 THE COURT: Well, that's why I'm asking what you're
22 really seeking --

23 MS. CADEMARTORI: Right.

24 THE COURT: -- so that I understand if you go that,
25 that's what you want, and then so it's not some deposition from

1 an individual. It's not some set of documents or e-mails back
2 and forth about who said what to whom at what time. It's --

3 MS. CADEMARTORI: Right. Your Honor, I would have to
4 reserve my rights for that, to the extent that it seemed that
5 there is a misappropriation or infringement, but the first step
6 is seeing whether --

7 THE COURT: Well, no, I mean for today.

8 MS. CADEMARTORI: For today, absolutely not.

9 THE COURT: For today, what you're asking for is the
10 ability to compare source codes to figure out whether you have
11 a claim against the debtor.

12 MS. CADEMARTORI: That's correct, Your Honor. And the
13 only other point that I'd make is that the reason -- there are
14 various reasons which I think are clear, at least to me, as to
15 why we're in this court, when it does have to do with property
16 of an estate, and it doesn't have to do with the Travana
17 litigation. You know, having to do with the source code. And
18 there is another reason why we show up now, and I've explained
19 that already.

20 There is also the pressure of the fact that we realize
21 that this Court is bowing towards -- I mean, this case is
22 bowing towards confirmation. We're not looking to upset that
23 process, but we are looking to make sure that nothing untoward
24 has happened.

25 We do have an interest in protecting our proprietary

1 information. And as I said, if it turns out that there is
2 nothing there, we fade into the background. If there is, well,
3 it changes everything.

4 THE COURT: All right. Let me hear from the other
5 side.

6 MR. CRYAN: Good morning, Your Honor, Michael Cryan of
7 Arent Fox for the debtor. Your Honor, there is a threshold
8 issue with respect to whether Fareportal has standing to bring
9 this motion. And the reason for that is Fareportal is not a
10 creditor. They're not a party-in-interest under the Bankruptcy
11 Code, as a matter of law.

12 And the reason for that is that the claim's bar date
13 has passed. You know, Fareportal cited the Pulp Finish
14 decision by Judge Gropper. And in that decision, Judge Gropper
15 found it highly relevant to mention that the claim's bar date
16 had been noticed by publication. And the same is true in this
17 case. At docket 116 is the proof of notice of publication.

18 So there was notice of the claim's bar date. So this
19 claimant -- this alleged claimant literally has no claim, no
20 claim as a matter of law, so there's nothing about this
21 bankruptcy case this claimant has an interest in. So this
22 claimant is not a party-in-interest under the Bankruptcy Code.
23 That's a very important threshold issue that is exacting. They
24 have to prove their standing to Your Honor, and they're not
25 able to show you standing as a matter of law.

1 The property that they're talking about, which was not
2 sold here -- and I'll get into that in a moment, but first and
3 foremost, it is no longer property of the estate. The debtor
4 sold this property ten months ago.

5 THE COURT: I understand that. If you didn't have a
6 claim's bar date, so let's make that a hypothetical -- I don't
7 know that it would matter because somebody would say well, we
8 don't know whether we have a claim. We don't know whether --
9 it would seem to be fair game. Would you agree?

10 MR. CRYAN: Well, I would say -- I would look to Judge
11 Gropper's decision in Pulp Finnish again, which they cited in
12 their reply, by the way, because Judge Gropper found it highly
13 relevant that the party seeking discovery had missed the
14 claim's bar date, or that the claim had been expunged. So
15 there was --

16 THE COURT: No, I understand that.

17 MR. CRYAN: -- so there was no claim as a matter of
18 law.

19 THE COURT: But I'm saying the question is whether --
20 and we'll get to that in a minute, but if there was no bar date
21 that has passed here, would you oppose this motion?

22 MR. CRYAN: Yes. And some of the topics that came up
23 in Your Honor's discussion with counsel are very relevant. The
24 property that has been sold is now Travana's property, a
25 different -- a buyer has that property.

1 THE COURT: Right, but why wouldn't it be relevant to
2 whether there's a claim against the estate for the sale of
3 property that -- again, I have no idea how common or not common
4 it is in the industry for someone to compare source code. It
5 sounds like it's its own special world, and I don't profess to
6 know how often this happens, how it happens, and whether it's
7 considered unusual or not.

8 MR. CRYAN: Well, I can tell Your Honor that Microsoft
9 certainly doesn't give up its source code, just because a
10 claimant comes along claiming that they have a dispute about
11 source code. And counsel readily admitted she was not familiar
12 with how that would play out in a case.

13 Let me explain in this case what's happening. The
14 debtor sold the source code. The debtor does not possess
15 source code.

16 THE COURT: I understand that, but I don't know that
17 that's a game changer, in that if it sold something that it
18 didn't own or that somebody else had some rights to, it would
19 create a claim against the estate. So I don't know simply the
20 fact that it sold ends the inquiry.

21 MR. CRYAN: Yeah. I didn't mean to say it ended the
22 inquiry, Your Honor. Now that it's sold, it's in the
23 possession of Travana. Travana has it. Travana is in the best
24 position to protect its own rights with respect to that
25 property, that source code that's been sold. The selling party

1 doesn't sort of maintain the source code to keep it kind of in
2 a library for future reuse. That is sold.

3 And that's why the pending proceeding that Your Honor
4 was mentioning is so important here. Not only is Travana best
5 positioned to protect its own interests with respect to the
6 source code that it purchased, pursuant to a duly noticed sale
7 in this court, but also there is a pending proceeding in which
8 the Court, considering the issues in that case, ought to decide
9 what will the Court allow in terms of any exchange of
10 intellectual property. So the pending proceeding that Your
11 Honor pointed out and discussed with counsel in depth is very
12 important in that regard.

13 THE COURT: How does it fit, in your view, with this
14 request? So what I heard from the other side is this is
15 distinct request, and it's not related to that litigation. So
16 how do you define that litigation for purposes of your argument
17 here?

18 MR. CRYAN: Well, let's look at this case. It cannot
19 be about this case. Their request cannot be about this case,
20 and the reason I say that is the claim's bar date has passed.
21 So Fareportal is in no position, for example, to object at a
22 confirmation hearing. They have no -- they literally have no
23 standing, so we kind of come back to that.

24 As I mentioned, they have constructed notice of the
25 bankruptcy filing by publication, and just to be clear, their

1 2004 application did seek correspondence. It did not seek only
2 source code.

3 THE COURT: Well, I saw that. That's why I was asking
4 what was really --

5 MR. CRYAN: Sure.

6 THE COURT: -- as you know, it's not uncommon for
7 people to ask for a lot of things, and once they come in --

8 MR. CRYAN: Yes.

9 THE COURT: -- court on a 2004, they utter the
10 following sentence: "What I really want is X".

11 MR. CRYAN: So let's go beyond the standing issue, not
12 that I'm conceding it by any means. It's a very important
13 threshold issue. But beyond that -- and it's another thing
14 that Judge Gropper mentioned in the Pulp Finnish case. They're
15 seeing a fishing expedition, and I know people often use that
16 term with respect to Rule 2004. But that's when the debtor or
17 the unsecured creditors' committee is seeking to obtain assets
18 for the estate, to acquire property, to enlarge the estate, to
19 benefit the estate.

20 THE COURT: No, I don't think that's fair. People can
21 ask for information from the debtor so they can find out where
22 they stand vis-a-vis the debtor. And that goes back to whether
23 they've missed the bar date and that's an issue. So I don't
24 know that that ends the inquiry.

25 I guess part of me likes to approach these things very

1 practically. I don't know if the debtor has access in any easy
2 way to the source code, such that it be compared and spend less
3 time on this issue than we might spend on attorneys' fees. I
4 don't know how easy or difficult it is to do that.

5 Judges, both here and the judge who's handling the
6 other litigation -- I would be surprised if that judge was any
7 more familiar with source code. I have a student in college,
8 one of my four children. He may be, but he's not home at the
9 time, so I am at sea, and I suspect that judge is as well.

10 So in the interest of efficiency, I'm wondering
11 whether -- and I understand the debtors are saying it's not our
12 fight, go somewhere else. But I'm just wondering how, as a
13 practical matter, complicated this is to exchange this kind of
14 information.

15 MR. CRYAN: It's not readily -- you know, the debtor
16 is really only the receiver at this point, as Your Honor may
17 know. It is not readily accessible information to the
18 receiver. The receiver did not maintain the sort of computer
19 infrastructure one would need to run a travel company because
20 all those assets have been sold. So no, the material is not
21 readily accessible.

22 And moreover, as Your Honor kind of brought out today,
23 counsel said we have no claims in this case. In their motion
24 they said, "Fareportal seeks this relief solely to protect its
25 rights and trade secrets."

1 And so you have a party who is not a creditor of the
2 estate who is seeking to protect their own rights and
3 interests. That's not the proper vehicle for Rule 2004. Your
4 Honor was absolutely correct that really what this is raising
5 is a lift stay issue that was not properly presented to the
6 Court, because there's a third party litigation going on but
7 they are trying to seek information from the debtor -- yes, but
8 to benefit a third party.

9 THE COURT: Well, I think I've gotten sort of some
10 mixed signals on that. I think the papers seem to sort of head
11 one way, and I think today there's been a slightly different
12 focus.

13 But when you say it's not readily accessible, I guess
14 my question -- does that mean you have it? You'd don't have?
15 You'd have to reconstruct it? And you may or may not have the
16 technical expertise to answer that question.

17 MR. CRYAN: I will say, Your Honor, I inquired ahead
18 of this hearing, and I have not reached a definitive answer on
19 all of those technical questions.

20 But coming back to this case, Fareportal brought a
21 case against the debtor company in 2013. At that time, they
22 alleged that the debtor misappropriated their trade secrets.
23 They mentioned source code in their complaint. That's what
24 their complaint was about, and they settled it. And all of
25 their source code had to be destroyed pursuant to that

1 agreement. So as a matter of the 2013 litigation --

2 THE COURT: Do --

3 MR. CRYAN: Yes.

4 THE COURT: I'm sorry to interrupt you.

5 MR. CRYAN: No, that's fine.

6 THE COURT: But do you happen to know whether the
7 debtor's source code changed after that time, in terms of the
8 scope of its business or whether that -- the status quo of its
9 source code when that litigation was settled in 2013 would have
10 mirrored where the debtor was just before filing and thus what
11 was sold?

12 MR. CRYAN: No. Because the document, among other
13 things, says nothing contained in this document shall be
14 considered as an admission by either party.

15 THE COURT: No, I don't mean it that way. What I'm
16 asking about is -- I'm not saying there's any wrongdoing, not
17 wrongdoing. People settled it, though it has the standard
18 caveats.

19 But I guess what I'm saying is if the state of
20 Airfasttickets' source code that it used for its business in
21 2013 was the same as the source code it used in 2016 or -- I'm
22 sorry, when this case was filed, which is 2015, and so in other
23 words, no one had modified the source code. The debtor was
24 just using the same information. That would seem to suggest
25 that maybe there would be nothing new to discuss.

1 In other words, the parties had a settlement that
2 canvassed the globe at that time, and that would still be true
3 as of anything that was sold. I don't know if my line of
4 reasoning will hold water, but I don't know if you know enough
5 about their business to be able to answer that question.

6 MR. CRYAN: You know, I haven't penetrated on the
7 technology, but Your Honor's absolutely right about the 2013
8 document. Because for example, at page 1, it says the parties
9 are bringing to a "final conclusion" their disputes. So you're
10 absolutely right. If they had any dispute, it needed to be
11 done and considered and adjudicated at that time.

12 Fareportal then released the debtor, so those claims
13 were released by the document that counsel was referring to.
14 But let's come back to this bankruptcy case because Your
15 Honor --

16 THE COURT: Well, but that release would cover
17 anything up to that point and therefore would seem to be -- so
18 for example, of Airfast after that settlement said geez, we're
19 going to tweak our business model, and we're adding something
20 new, and to add something new we have some new source code, and
21 it would seem to cover everything up to that point. But maybe
22 it wouldn't cover new source code. And again, you as the
23 receiver, you may or may not be familiar enough with their
24 business model to know whether anything evolved over time.

25 MR. CRYAN: Your Honor's absolutely right, but there's

1 no allegation that the debtor had access to Fareportal after
2 that time. That case had to do with employees and alleged
3 misappropriation prior to the time of the lawsuit. There's no
4 allegation of access after that.

5 So Your Honor never approved a sale order in this case
6 having anything to do with Fareportal's property. And the
7 reason I say that is the sale order only sold the right, title,
8 and interest of the debtor in the property, so --

9 THE COURT: I know, but that's a label, and so it's as
10 good as the underlying facts are. I see your point about that
11 this party's -- the source of its complaint are common
12 employees, employees who wandered around and worked for a
13 number of different people, and that that didn't happen after
14 the settlement. And so to the extent that there were claims
15 arising from that, and there was a settlement in 2013, it would
16 seem to be subsumed by that, and therefore, there hasn't been
17 an explanation as to why they would magically arrive at this
18 point. But I don't know that the labels do a whole lot for --
19 you know lawyers put lots of labels in lots of agreements.

20 MR. CRYAN: Yes. No, I wasn't trying base my argument
21 only on the label, because remember; we had the factual
22 circumstance of the 2013 release. Then we have the 2016, the
23 present bankruptcy case -- bankruptcy bar. So any claims
24 subsequent to 2013 has been barred as a matter of bankruptcy
25 law.

1 So that's why what Your Honor asked at the outset
2 really was pertinent, is isn't this really a claim about a
3 third-party litigation, which it is. It's a claim about
4 Fareportal's alleged claims against Travana in a whole separate
5 forum, which is a pending litigation and another reason to deny
6 it.

7 And Your Honor, with all the briefing that's gone on,
8 with all the cases that were cited to the Court, there's not a
9 single case out there with a party lacking standing, such as
10 Fareportal in this case, obtaining Rule 2004 discovery
11 completely outside the bounds of the pending litigation that
12 they're engaged in, and obtaining discovery from a debtor.
13 There just is no such case. All of the other cases are within
14 the realm of 2004 as we normally handle it.

15 And in this case, with the looming confirmation
16 hearing in October, it would be an extreme detriment. Please
17 don't make a low opinion of the effort that would be required
18 to cooperate with this Rule 2004 application.

19 This would divert the energies of the sole receiver
20 who is trying to wind up this case in a responsible fashion.
21 And also, what's the ultimate goal? The ultimate goal is only
22 to give Fareportal its own claims, to bolster claims of a
23 nondebtor, and that again is not a proper motion under Rule
24 2004. Thank you, Your Honor.

25 MR. STEPHENS: Good morning, Your Honor. Timothy

1 Stephens from Morgan Lewis for the objector, Travana, Inc.
2 Your Honor, it is absolutely correct that this is no longer
3 debtor property. My client ten months ago closed on a purchase
4 of that property for millions of dollars.

5 My client obviously has a real interest in protecting
6 the confidentiality of that information. And there may be talk
7 about oh, this could be screened. That is a procedure that can
8 get away from the party-in-interest immediately.

9 THE COURT: Well, let me ask. Is it something that is
10 either currently part of or related to or completely outside of
11 the scope of the current litigation elsewhere?

12 MR. CRYAN: It is part of the scope of their requested
13 relief, and by that I mean in that case they're a serial
14 litigant. They've sued ex-employees and other competitors in
15 2013, '14, '15 and now '16 in separate cases.

16 This 2016 case, which was brought on August 1st, they
17 went into court on an order to show cause. They asked the
18 court for immediate discovery. Part of that immediate request,
19 which is subject to a pending motion, has not been decided yet,
20 but will be decided at a hearing on October 5th.

21 Part of that relief, part of their motion, what
22 they've asked for brings this into that case, because they've
23 asked for a -- just as counsel said, a forensic review of all
24 of Travana's computer systems and software. That would cover
25 what was purchased ten months ago.

1 We will fight that tooth and nail and are fighting
2 that tooth and nail, but they've put that at issue in the New
3 York State litigation, which is an application they brought
4 prior to this 2004 application.

5 THE COURT: All right. Am I correct that that case
6 would seek to bar use of any of what they deem to be their
7 property by your client, including any property purchased as
8 part of the sale in this case?

9 MR. CRYAN: They didn't dice it up that way. They
10 said any of their proprietary trade secret information. But --

11 THE COURT: Right. But in other words, you took what
12 was purchased in this case. It's now part of your ongoing
13 business, and it would be covered to the extent that some court
14 somewhere found that it was properly theirs.

15 MR. CRYAN: If a court said you can't use that, then a
16 court would say you can't use that. But they have, in fact,
17 put it at issue here.

18 THE COURT: Right, but let me ask you -- I'm not
19 asking this very clearly, so let me give it another shot. You
20 didn't buy the source code and put it in mothballs on a shelf.
21 It's been integrated into your business, so it would be -- if
22 somebody said let's see what -- do a forensic review of what
23 you have, it would include what was purchased in this case.

24 MR. CRYAN: Yes, that's my understanding. I can't
25 represent that it's all been put in or that there are different

1 segments. I, like everyone here, am not confident --

2 THE COURT: That's fair. I'm asking questions as a
3 nonsource-code expert, again, so they're not particularly
4 elegant, but I just wanted to make sure because there might
5 be -- I can imagine there might be business reasons where
6 someone says oh, we're going to roll that out; it's a part of
7 something else. But it sounds like it's either part of your
8 business or it's being integrated and would be covered by any
9 request for a forensic review of what you have.

10 MR. CRYAN: Correct. But I think that one may need
11 not even get to the pending action rule. A lot of time has
12 been devoted this morning to the bar date. My client, Travana,
13 purchased the asset ten months ago, closed a day after the sale
14 order -- the sale order I believe it was November 24th, 2015.
15 The closing was the next day. The sale order rids this
16 property of any interest of another by definition. There are
17 provisions that denude the property of any potential claim that
18 Fareportal would ever bring against the debtor.

19 They have not said they have a claim. They took a
20 powder for three years with respect to the debtor. They
21 disappeared. They did not have -- they don't even attempt to
22 say that we have suspicion that something happened. They just
23 say well, why not. We want to take a look at this confidential
24 proprietary information that has already been sold for millions
25 of dollars to my client.

1 That is something that is problematic from a standing
2 standpoint for the bar date, but also extremely, and even more
3 pointedly problematic from the terms of Your Honor's sale
4 order, which has not been vacated. There's no motion to vacate
5 that order. There's no appeal of that order. That order is in
6 place, and that order has denuded any potential right, title,
7 interest, curiosity of Fareportal with respect to this asset
8 that was bought by my client.

9 If Your Honor has any questions --

10 THE COURT: I don't at this time, thank you.

11 MR. CRYAN: Thank you, Your Honor.

12 THE COURT: All right, any response? Let me see if I
13 tee up what my concerns are. It sounds like the ongoing
14 litigation, in fact, does cover this in some way, shape, or
15 form, because you've asked for a forensic review of their
16 source code and what they have. Am I right about that?

17 MS. CADEMARTORI: Your Honor, as you pointed out
18 earlier, many times discovery is quite broad. The fact is
19 this: The Ware --

20 THE COURT: No, but what did you ask for in terms of
21 relief in that case?

22 MS. CADEMARTORI: In that case --

23 THE COURT: You want to look at what they have.

24 MS. CADEMARTORI: Yes, and with respect to --

25 THE COURT: And they have the source code --

1 MS. CADEMARTORI: -- their loyalty --

2 THE COURT: -- that was sold?

3 THE COURT: Right. But with respect to a certain type
4 of source code having to do with the loyalty programs and the
5 customer programs. It is very specific as to what Jason Ware
6 may have brought over. There's a TRO in place with respect to
7 that type of source code.

8 THE COURT: No, but that's not my question. My
9 question is as part of the relief and what you've asked a New
10 York State judge to do, you've asked to look at all their
11 source code.

12 MS. CADEMARTORI: No, I believe that the terms, the
13 search terms, as well as the discovery itself limits it to the
14 customer loyalty programs, and that subset.

15 THE COURT: But it would include what was sold by the
16 debtor to --

17 MS. CADEMARTORI: I don't believe so. I'm sorry, Your
18 Honor.

19 THE COURT: Sure.

20 MS. CADEMARTORI: I'm actually not personally involved
21 in that action, so I have (indiscernible).

22 THE COURT: All right. All right, sure. By the way,
23 I know there are people here for other matters, including
24 reaffirmation agreements that were set for 10:30. We will get
25 there as soon as we can. Thank you very much for your

1 patience.

2 MS. CADEMARTORI: Your Honor, the most succinct way I
3 describe it is that because of the timing when Ware came over
4 to Travana, it has to do with source code that would have been
5 brought over to Travana after the sale, which occurred, I don't
6 know, eight months earlier, ten months earlier -- something to
7 that extent. So it frankly would not capture the source code
8 that was sold by the debtor to Travana. And I actually find it
9 sort of surprising that Travana is not excited that we would
10 say that. It does not capture that source code.

11 THE COURT: Well, it seems to me that there are a
12 couple of fundamental undisputed facts here. The debtor
13 doesn't have the source code. There's a party that bought the
14 source code. They bought it to use it.

15 And so to the extent your client is interested, which
16 as I understand how these things work, in preventing somebody
17 from using something they think they own, you will seek an
18 injunction. Right? You will say please stop using our stuff.
19 You can't seek it against the debtor because the debtor doesn't
20 have it. And you'd have to ask for it against the party whom
21 you have pending litigation that you just filed.

22 And so that will clearly be the subject, and I
23 can't -- I'm not going to try to parse out -- I'm ill equipped
24 to do so, both as a matter of fact and as a matter of technical
25 expertise -- the scope of what is currently asked for. But to

1 the extent you're asking for somebody to stop using the source
2 code, it's going to have to be against a party you've just
3 sued.

4 And so there's no way that's not going to be part of
5 that litigation. And that's in stark contrast, it would
6 appear, to the debtor, which has a receiver which came in and
7 says we don't have it readily available. Now, to the extent to
8 which you can recreate something that you currently don't have,
9 and you don't have the folks to do that is a huge expense to
10 the estate, which would be borne by the creditors of the
11 estate. And that sometimes is something you need to do if you
12 can't get it anywhere else, but it certainly doesn't seem like
13 that's the case.

14 MS. CADEMARTORI: Your Honor, there's -- my issue here
15 is that under normal circumstances I could go after Travana,
16 and it would be a separate action, by the way, from the current
17 action with regard to where and what is happening right now
18 with the loyalty customer source code and programs. It would
19 be a whole new action.

20 Under normal circumstances, meaning where there wasn't
21 a bankruptcy that involves the sale of the source code, I could
22 do that. In this case, my concern is that there's a gotcha
23 moment.

24 If we do -- let's say for argument sake that in the
25 Ware action we could actually see their source code -- see the

1 source code that was sold by the debtor to Travana. That
2 Travana wouldn't fight that tooth and nail and not potentially
3 win by waving the sale order in front of us. They would --

4 THE COURT: Well, if they need to -- if you reach the
5 point where someone says you have our -- it's our source code,
6 some judge says it is their source code, now we have to
7 understand whether the sale order changes the game. I fully
8 expect that I will see all you nice people again because that's
9 the way it works. To understand the sale order in a bankruptcy
10 case, to understand the plan in a bankruptcy case, people come
11 back here. That's the way it works. And I can't imagine any
12 other judge would be anxious to do that, and I've never really
13 had the instance where somebody said no, and we're not going to
14 go back to the Bankruptcy Court on that. You'd end up here.

15 But there's a question whether we even -- I understand
16 why you're discussing it. I understand why counsel discussed
17 it, and it's related to what we're talking about now, but that
18 actual question -- we're in step 7. That's like step 150.
19 There's a lot of other things that I think that would have to
20 get there.

21 And that's important for purposes of the bankruptcy
22 case, because getting to all these things costs the estate
23 money and costs the estate time. And you've got an ongoing
24 business that has the source code, and they're in a good
25 position to litigate those issues and get them properly in

1 front of the New York State court, as opposed to the debtor,
2 who's really just trying to extricate itself from this.

3 So if the debtor was the only option, and there wasn't
4 another case floating around there against the party that has
5 the source code, is the one who would use it, you would have to
6 get an injunction against them anyway. Or otherwise, none of
7 this matters. Right?

8 MS. CADEMARTORI: Right, but if I may, Your Honor.
9 The debtor has not said that they don't have the source code.
10 There's nowhere in the sale order or the APA that says that
11 they must --

12 THE COURT: But you have a receiver for a party that
13 sold something. You don't have an ongoing operating business
14 where you can call up the person in system support and say what
15 would it take for you to do X, Y, and Z. The receiver is going
16 to have to say okay, we now have to figure out with what we
17 have -- basically we've tried to get rid of everything and
18 monetize it for the estate. That they are not well suited to
19 do it.

20 And you have a company that has it and is well suited
21 to do that. And I'm sure you'll have that conversation before
22 a New York State judge who's going to say what do you want, and
23 then you'll have to explain to that judge, who will have the
24 unenviable task of figuring out what the industry standards are
25 in terms of people sharing source codes and protections and

1 whether it's appropriate or not appropriate. I'm sure that'll
2 be a difficult thing to figure out. But the estate seems to be
3 in a poor position for it.

4 But let me ask one other thing. Am I right that the
5 source of the concern here seems to be the common employees?

6 MS. CADEMARTORI: Specifically one common employee,
7 yes.

8 THE COURT: Right. And that employee was gone from
9 the debtor as of 2013.

10 MS. CADEMARTORI: I do not believe so. I believe that
11 that employee was gone from the debtor at the same time that
12 the entity that was formed for the purpose of buying the assets
13 from the debtor occurred, so at the same time as Jason Chen,
14 the CEO.

15 THE COURT: But then why -- how am I supposed to
16 understand the 2013 settlement and release? It --

17 MS. CADEMARTORI: Well, there are continuing
18 obligations under that document. There are obligations.
19 There's a period during which they cannot hire employees.
20 There are continuing obligations to not continue to
21 misappropriate source code. There are continuing obligations.

22 THE COURT: Right, but was there something that
23 changed after that 2013 settlement and release that gives --
24 and I was trying to get at with other counsel, to say did you
25 start a new line of business, did you create a new source code

1 that you went out and marketed or used yourself.

2 And I'm not aware of anything in the record that seems
3 to suggest that, and that would seem to say that there's --
4 again, I understand counsels' concern on all sides about a
5 gotcha moment. Nobody wants to say well, that's a total game
6 changer.

7 So I'm trying to figure out if there's anything of
8 significance that happened. He said well, I -- the 2013
9 settlement really is -- didn't address this, but I'm not seeing
10 anything factually that would seem to tell me that the parties
11 didn't have a discussion about all that and buried the hatchet
12 in 2013.

13 MS. CADEMARTORI: Your Honor, I mean, I would assert
14 that the continuing obligations under that document did not --
15 they buried the hatchet with respect to items before then, but
16 not with respect to what occurred after that. And as much --

17 THE COURT: Well, what changed? What can you proffer
18 happened after 2013 as to the debtor that would mean that the
19 debtor has this magic bullet that is a game changer?

20 MS. CADEMARTORI: I mean, very honestly, Your Honor,
21 we don't know. But the reason we don't know is because we did
22 not know about the bankruptcy. And if I may, they make a big
23 deal about the fact that we never filed a claim.

24 Let's keep in mind that the sale was consummated about
25 six months prior to any claim's bar date. There was no

1 publication of that. We were not noticed. They make a big
2 deal that we're not a party-in-interest. We're a part to a
3 document in a litigation that occurred two years before the
4 bankruptcy case. So frankly, the fact that we were not
5 noticed, and that we were not solicited, and that we were not
6 involved gives us some pause.

7 THE COURT: Right now, this is not a notice case.

8 MS. CADEMARTORI: Right.

9 THE COURT: That's a whole other kettle of fish. And
10 if you want to read the recent opinion in the GM case about due
11 process and notice and decide that you want to go down that
12 road, we can go down that road. That is a heavy burden for
13 parties if we want to have that discussion.

14 It's a very serious matter, and it can't be sort of
15 raised anecdotally and say well -- we're either talking about
16 notice or we're not. Right now, based on the papers I have in
17 front of me, nobody has pulled the pin on notice, and so -- but
18 right now, I confess; I'm inclined to say that we don't need to
19 pull the pin on notice. I just am having trouble getting past
20 the fact that the party that bought the source code -- if I
21 were your client, would be the party that you need to talk to
22 about issues about whether they're going to have continuous use
23 of something that you claim is yours. And so that's inevitably
24 going to come up in that litigation, so I don't know that I
25 need to parse out the issues as to exactly what precisely

1 happened in the first skirmish in August in your case.

2 If the debtor was an operating business and had
3 somebody that they could say well, we still have an operating
4 system support, we can ask somebody what it would take the sort
5 of compare source codes, and whether we think that's
6 appropriate, that's a different factual circumstance. That's
7 not -- we have a receiver. They've sold everything. And it is
8 a huge burden to them, and it seems unnecessary in light of
9 your ongoing litigation with the party that has the source
10 code.

11 I will reiterate if there is an issue about the sale
12 order, it comes down to whether the sale order is the case
13 cracker, to quote my cousin Vinny, then we'll be back here.
14 But I'm not hearing anything that says that that's the first
15 place you're going in that litigation. That sounds like that's
16 far off in the distance.

17 If it comes up, you're going to be back here, but I
18 have -- I just have trouble, since they have the source code
19 and you're in litigation with them, and if you haven't asked
20 already, you're going to ask them to stop using something that
21 you claim is yours. I just have trouble seeing this as a 2004
22 issue.

23 I don't blame counsel for following the playbook,
24 which is to say I'm going to ask for information any place I
25 can get it; that's what I'm supposed to do. I understand that,

1 but 2004 is oddly very broad but has some very narrow caveats.
2 And one has to do with pending litigation, and the other has to
3 do with what its tie is to the bankruptcy case. And so given
4 all that, I just at this point -- with all the caveats I've
5 mentioned, don't see how it's appropriate to get it in this
6 case from this proceeding at this time.

7 So I'm going to have to deny the 2004 request for the
8 reasons I've stated in the record. Again, I don't begrudge
9 you. You do what people do to get information from wherever
10 you've got to get it from. But it's pretty clear that you're
11 in the opening skirmishes of a protracted litigation where this
12 is going to come up and will come up, given that they have the
13 source code.

14 So I'd ask the debtor's counsel to submit a proposed
15 order electronically that denies the 2004 application for the
16 reasons stated on the record today.

17 I appreciate very much the arguments of counsel. I
18 think the case has been very well argued and very well briefed.
19 And I suspect you will have a lot of discussions about these
20 issues going forward in another forum.

21 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

22 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

23 THE COURT: Thank you. So is there anything else that
24 we have on for Airfasttickets today, or is that it?

25 UNIDENTIFIED SPEAKER: (Indiscernible).

1 THE COURT: All right, so I confess off the top of my
2 head I don't remember whose motion to seal it was.

3 UNIDENTIFIED SPEAKER: (Indiscernible).

4 THE COURT: All right, just make sure we have an
5 electronic version of the proposed order so we can enter that.
6 And I will make a pitch for the fact that at some point when we
7 have a final nonappealable order, if that's where it ends up,
8 let the clerk's office know what to do with the sealed
9 information. They seem to keep acquiring more and more sealed
10 information cases everywhere, and people forget about it, and
11 they're running out of space. So I'd appreciate that. Thank
12 you.

13 UNIDENTIFIED SPEAKER: Thank you.

14 (Whereupon these proceedings were concluded at 11:34 AM)

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Second application for interim professional compensation and reimbursement of expenses for Richards, Layton & Finger, P.A., debtor's attorney is approved.	12	18
Second application for interim professional compensation for BSW & Associates, accountant is approved.	12	19
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C E R T I F I C A T I O N

I, Tamara Bentzur, certify that the foregoing transcript is a true and accurate record of the proceedings.



TAMARA BENTZUR

AAERT Certified Electronic Transcriber CET**D 824

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: September 15, 2016

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September 14, 2016

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EXHIBIT B

Fill in this information to identify the case:

Debtor 1 Airfasttickets, Inc.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Southern District of New York

Case number 15-11951 (SHL)

RECEIVED

OCT 03 2016

BMC GROUP

Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Fareportal, Inc.</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Sheppard Mullin Richter & Hampton, LLP</u> Name <u>30 Rockefeller Plaza (Attn: M. Cademartori)</u> Number Street <u>New York</u> <u>NY</u> <u>10112</u> City State ZIP Code Contact phone <u>212-653-8700</u> Contact email <u>mcademartori@sheppardmullin.com</u>	Where should payments to the creditor be sent? (if different) <u>Fareportal, Inc. (Attn: Werner G. Kunz)</u> Name <u>135 West 50 Street, Suite 500</u> Number Street <u>New York</u> <u>NY</u> <u>10020</u> City State ZIP Code Contact phone <u>646-738-7813</u> Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	Filed on _____ MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

AirFastTickets, Inc. POC



00086

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ not less than \$10,000,000. Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

See attached addendum.

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____%

☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

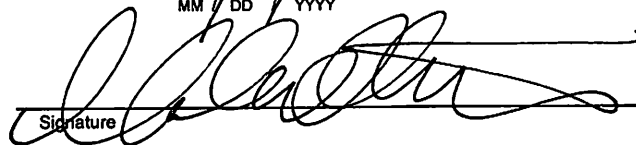
I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date

09/30/2016
MM / DD / YYYY

Signature 

Print the name of the person who is completing and signing this claim:

Name Malani J. Cademartori
First name Middle name Last name

Title Partner

Company Sheppard Mullin Richter & Hampton, LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 30 Rockefeller Plaza
Number Street

New York NY 10112
City State ZIP Code

Contact phone 212-653-8700 Email mcademartori@sheppardmullin.com

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

In re:

AIRFASTTICKETS, INC.

Debtor.

Chapter 11

Case No. 15-11951 (SHL)

ADDENDUM TO PROOF OF CLAIM OF FAREPORTAL, INC.

A. CREDITOR INFORMATION

All communications regarding this Proof of Claim filed by Fareportal, Inc. (“**Fareportal**”) should be addressed to Fareportal (Attn: Werner G. Kunz), 135 West 50 Street, Suite 500, New York, New York 10020, Telephone (646) 738-7813, with a copy to Malani J. Cademartori, Esq., Sheppard Mullin Richter & Hampton LLP, 30 Rockefeller Plaza, New York, New York 10112, Telephone (212) 653-8700.

B. CLAIM INFORMATION

1. Basis for Claim. Fareportal holds potential pre-petition claims (the “**Claim**”) in an unliquidated amount of no less than \$10,000,000.00, in the aggregate, against debtor Airfasttickets, Inc. (the “**Debtor**”) arising from the (i) breach of a certain agreement (the “**Agreement**”) between the Debtor and Fareportal due to, among other things, the misappropriation of Fareportal’s trade secrets by the Debtor and/or its current or former employees,¹ (ii) rejection of the Agreement on the effective date pursuant to Article 8.1 of the Debtor’s *First Amended Chapter 11 Plan of Liquidation*, and (iii) sale of Fareportal’s trade secrets, including without limitation, source code, to Travana, Inc., formerly known as AirTourist, Inc., on or about November 24, 2015. The amount and liability of the Debtor for the

¹ Due to the confidentiality of the existence and subject matter of the Agreement, the Bankruptcy Court approved the sealing of certain pleadings filed by Fareportal that describe the Agreement. See Dkt. Nos. 205, 227 (the “**Sealing Orders**”). The Debtor, the Court, the United States Trustee and certain other parties have been provided with the Agreement pursuant to the Sealing Orders.

amounts asserted herein shall be proven at a later date and through an appropriate proceeding on the issues, following further discovery.

2. Amount and Classification of Claim. Fareportal holds an unsecured claim in an unliquidated amount of no less than \$10,000,000, in the aggregate.

3. Setoff. The Claim is not subject to any known right of setoff held by the Debtor.

4. Reservation of Rights. Fareportal reserves its rights to amend or further supplement this Proof of Claim in all respects, including, but not limited to, liquidating any unliquidated amounts, asserting a claim or claims for additional amounts due and/or claims based on alternative theories or liabilities, and asserting any claims for damages arising from events or conduct by the Debtor. Moreover, Fareportal hereby reserves its rights to assert all or part of the claim as an administrative or other priority claim, and to file additional claim(s) or application(s) for payment of such administrative or priority claims.

Filing of this Proof of Claim is not: (a) a waiver or release of Fareportal's rights against any person, entity or property, including without limitation, any officers, directors or other principals of the Debtor; (b) a consent by Fareportal to the jurisdiction of this Court with respect to proceedings, if any, commenced in any case against or otherwise involving Fareportal; (c) a waiver or release of Fareportal's right to trial by jury in any proceeding as to any and all matters so triable herein, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2); (d) a waiver or release of Fareportal's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Court Judge; or (e) an election of remedy.

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015
212.653.8700 main
212.653.8701 main fax
www.sheppardmullin.com

212.634.3055 direct
MDriscoll@sheppardmullin.com

September 30, 2016

File Number: 47CT-245952

VIA FEDEX

BMC Group, Inc.
Attn: Airfasttickets Claims Processing
3732 West 120th Street
Hawthorne, CA 90250

Original

Re: *In re Airfasttickets, Inc.*, Case No. 15-11951
Proof of Claim of Fareportal, Inc.

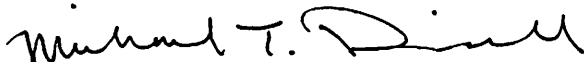
Dear Sir/Madam:

Enclosed please find an original and one additional copy of the Proof of Claim of Fareportal, Inc. in the above referenced bankruptcy case.

Please date-stamp the enclosed copies (which are marked as such) upon receipt, and return the date-stamped copy in the enclosed stamped, self-addressed envelope.

Please do not hesitate to contact me with any questions regarding the enclosed.

Sincerely,



Michael T. Driscoll
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Enclosures

EXHIBIT C

Paul W. Garrity
Jonathan Stoler
Thomas M. Monahan
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
30 Rockefeller Plaza
New York, New York 10112
Telephone: (212) 653-8700
Facsimile: (212) 653-8701
Attorneys for Plaintiff Fareportal Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FAREPORTAL INC.,

Plaintiff,

v.

TRAVANA, INC., AHMET SEYALIOGLU,
NISHITH KUMAR A/K/A NISHITH VARMA,
AND JASON WARE,

Defendants.

No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Fareportal Inc. (“Fareportal” or the “Company”), by and through its attorneys Sheppard, Mullin, Richter & Hampton LLP, for its Complaint, alleges against Defendants Travana, Inc. (“Travana”), Ahmet Seyalioglu (“Seyalioglu”), Nishith Kumar a/k/a Nishith Varma (“Kumar”), and Jason Ware (“Ware”) (collectively, “Defendants”) as follows:

NATURE OF THE ACTION

1. This action relates to a systematic attack on Fareportal, a pioneering and category-leading travel technology company with a 38 year history, by a Chinese-backed startup which has targeted Fareportal’s employees, its intellectual property, and, ultimately, its entire business model. The architect of this scheme, Travana, has targeted Fareportal’s offerings in the highly competitive industry of online travel agencies (“OTAs”). Travana’s

misconduct includes its unlawful taking and use of Fareportal's trade secrets, including its copyrighted source code and software (the "Copyrights"), and other Fareportal confidential and proprietary information. Travana illicitly acquired this extraordinarily valuable information and material in concert with former Fareportal employees Seyalioglu, Kumar and Ware, who respectively held senior management roles at Fareportal within Fareportal's technology, finance and marketing departments. Travana has used those trade secrets, which took Fareportal nearly a decade to develop, to create a competing business and launch an OTA, Janbala.com ("Janbala"), in a matter of months.

2. Fareportal, among its businesses, operates a number of highly successful OTAs, the largest of which is CheapOair.com. Fareportal's operations rely heavily on its trade secrets and confidential and proprietary information, including, but not limited to, the software and source code by which Fareportal operates its OTAs. Seyalioglu, Kumar and Ware are each former key Fareportal employees who were granted access to such trade secrets and confidential and proprietary information in connection with their employment at Fareportal.

3. Seyalioglu, Kumar and Ware each resigned their employment with Fareportal after misappropriating Fareportal's trade secrets and confidential and proprietary information, including, but not limited to, Fareportal's software and source code. Seyalioglu, Kumar and Ware subsequently commenced employment with Travana and are performing work in direct competition with Fareportal using Fareportal's own trade secrets and confidential and proprietary information.

4. This is an action by Fareportal to recover damages arising from Defendants' misappropriation of Fareportal's trade secrets and infringement of Fareportal's Copyrights.

Defendants unlawfully accessed Fareportal's software, trade secrets and other confidential and proprietary information through, among other ways, Ware's unauthorized access of Fareportal's computers and databases in violation of the Computer Fraud and Abuse Act. Travana, Seyalioglu, Kumar and Ware's misappropriation of Fareportal's Copyrights and other trade secrets and confidential and proprietary information also violated the Defend Trade Secrets Act. Finally, Fareportal is also asserting common law claims against Travana, Seyalioglu and Kumar with respect to their unlawful conduct.

THE PARTIES

5. Fareportal is a New York corporation with its principal place of business at 135 W 50th St, New York, New York 10020. Fareportal is a worldwide leader in the online travel services industry.

6. Travana is a Delaware corporation with its principal place of business at Pier 5, The Embarcadero, Suite 101, San Francisco, California 94111. Travana is a travel technology company. Travana recently launched Janbala to directly compete with Fareportal and its affiliated companies in the individual and corporate traveler airfare market. Janbala markets services to travelers throughout the world, including those that reside in this district. Upon information and belief, Travana's recruitment of Seyalioglu, Kumar and Ware, as well as its misappropriation of Travana's trade secrets and confidential and proprietary information, including the Copyrights, took place in this district.

7. During the relevant time periods described in this Complaint, Ware was a resident of the State of New York. Ware was employed by Fareportal and its affiliated companies from on or about October 29, 2013 until July 1, 2016, when he voluntarily

resigned. At the time of his resignation, Ware held the position of Associate Director, Loyalty & CRM. On or about July 8, 2016, Fareportal learned that Ware had begun working at Travana as its Director, Loyalty & CRM.

8. During the relevant time periods described in this Complaint, Seyalioglu was a resident of the State of New York. Seyalioglu was employed by Fareportal and its affiliated companies from 2004 until on or about December 24, 2012, when he voluntarily resigned. At the time of his resignation, Seyalioglu held the position of Vice President of Technology. Seyalioglu is currently employed by Travana as its Chief Technology Officer.

9. During the relevant time periods described in this Complaint, Kumar was a resident of the State of New Jersey. Kumar was employed by Fareportal and its affiliated companies from on or about February 2006 until July 22, 2016, when he resigned from his employment at Fareportal. At the time of his resignation, Kumar held the position of Senior Vice President of Finance. On December 9, 2016, Fareportal learned that Kumar had begun working at Travana.

JURISDICTION AND VENUE

10. This action arises under the United States Copyright Act, 17 U.S.C. §§ 101, *et seq.*, the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030, *et seq.*, and the Defend Trade Secrets Act, 18 U.S.C. § 1836.

11. This Court has subject matter jurisdiction over this action under 18 U.S.C. § 1030(g), 28 U.S.C. §§ 1331 and 1338. This Court maintains supplemental jurisdiction over Fareportal's common law claims pursuant to 18 U.S.C. § 1367.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as Defendants are subject to personal jurisdiction in this district and a substantial part of the events giving rise to Fareportal's claims occurred in this district.

FAREPORTAL'S BUSINESS AND THE COPYRIGHTS

13. Fareportal is a technology company that provides travel-related services to customers and businesses worldwide. Fareportal owns and operates a number of OTAs that primarily focus on helping customers search for and find inexpensive airfare. CheapOair and OneTravel are two of Fareportal's OTAs and cater to individual travelers. CheapOair and OneTravel are among the most popular OTA websites in the world.

14. Fareportal's OTAs 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 OTAs focus primarily on discounted airfare.

15. The portion of the OTA air travel market upon which CheapOair and OneTravel focus (and upon which Janbala also focuses) is highly competitive.

16. Since its inception nearly a decade ago, Fareportal has spent substantial resources developing its trade secrets and confidential and proprietary information that are crucial to its success, and would provide a direct competitor such as Travana with a tremendous unfair advantage if Travana were to acquire such information.

17. Those trade secrets and confidential and proprietary information include, but are not limited to, the Copyrights. The Copyrights are original works of authorship and constitute copyrightable subject matter under the copyright laws of the United States, 17 U.S.C. § 101, *et seq.* The Copyrights have been registered or are in the process of being

registered with the Copyright Office. The relevant U.S. Registration Number for Fareportal's Version 4.0 software ("FP4") is TX 8-272-588. Fareportal is the owner of all right, title, and interest to the FP4 copyright registration, as well as the other Copyrights that are in the process of being registered, and has complied in all respects with the laws governing copyright.

18. The Copyrights include the software and source code currently used by Fareportal, including the software and source code operating Fareportal's Business Intelligence system (the "BI System"), as well the software and source code that Fareportal used in connection with the previous version (FP4) of its systems.

TRAVANA'S BUSINESS

19. Travana operates Janbala and claims to be a modest start-up operation. Travana was founded in 2015 and employs 73 people, most of whom were hired in 2016. At least seven of those employees (i.e., approximately 10% of Travana's workforce) are former Fareportal employees that Travana has specifically targeted for recruitment and employed in furtherance of its scheme to misappropriate Fareportal's trade secrets and confidential and proprietary information, including the Copyrights. Travana launched Janbala on or about June 15, 2016.

20. One of Travana's key investors is HNA Group Co., Ltd., a Chinese conglomerate which owns Hainan Airlines, and other travel and service providers in the aviation and tourism industry.

21. Financially backed by HNA Group, Travana developed its nascent OTA in a matter of months by recruiting and encouraging Fareportal employees to misappropriate Fareportal's trade secrets and confidential and proprietary information, including the

Copyrights, and deliver the same to Travana so that those materials could be incorporated into Janbala.

**TRAVANA AND SEYALIOGLU'S SCHEME TO MISAPPROPRIATE
FAREPORTAL'S TRADE SECRETS AND CONFIDENTIAL AND PROPRIETARY
INFORMATION, INCLUDING THE COPYRIGHTED UNDERLYING SOURCE
CODE FOR FP4**

22. Although founded only recently, Travana's scheme to misappropriate Fareportal's trade secrets and confidential and proprietary information, including the Copyrights, actually began in or around January 2013 when Seyalioglu resigned from his employment at Fareportal and began employment with Airfasttickets, Inc. ("Airfast"), a competing online travel company, and, as described below, predecessor of Travana.

A. Seyalioglu's Employment at Fareportal

23. In 2004, Seyalioglu was hired by Fareportal as a web designer working for one of Fareportal's affiliates. In or about 2007, Seyalioglu was promoted to the position of Associate Vice President of Technology. In or around November 2011, Seyalioglu's employment for payroll purposes was transferred to another Fareportal affiliate, Travelong, Inc. Seyalioglu's job duties did not change at that time. In or around October 2012, Seyalioglu was promoted to Vice President of Technology, then the second-most senior technology position at Fareportal.

24. In connection with his employment, Seyalioglu was granted access to FP4, the software and source code that Fareportal was using at the time to operate its OTAs.

25. In fact, as the second-most senior technology employee at Fareportal, Seyalioglu was given extraordinary access to the Fareportal systems, including FP4. In light of his senior management status, Seyalioglu was able to work from home, and through his access and privileges with respect to the Fareportal system, he maintained direct access

to Fareportal's servers and could implement or extract data from those servers at his discretion, provided that he accessed such data to perform his job duties.

26. In or around January 2013, Seyalioglu resigned from his employment at Fareportal and commenced employment as Head of IT and Chief Technology Officer of Airfast, a direct competitor of Fareportal.

27. Upon information and belief, Seyalioglu misappropriated Fareportal's trade secrets and confidential and proprietary information, including the underlying source code for FP4, and took such information with him to use at Airfast.

B. The Airfast Litigation and Involuntary Bankruptcy

28. In or around February 2013, Fareportal pursued litigation against Airfast, Seyalioglu and others related to their misappropriation and use of Fareportal's trade secrets and confidential and proprietary information (the "Airfast Litigation"). Fareportal was granted a temporary restraining order in the Airfast Litigation that prevented Airfast, Seyalioglu and others from using Fareportal's trade secrets and confidential and proprietary information.

29. On July 27, 2015, Airfast was forced into an involuntary bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of New York (Case No. 15-11951) (the "Airfast Bankruptcy"). At that time, Airfast was run by, among others, Seyalioglu, its Head of IT and Chief Technology Officer, and Jason Chen ("Chen"), its co-Chief Executive Officer.

30. In the Airfast bankruptcy proceedings, Chen and others purchased the assets of Airfast through an entity called AirTourist, Inc., the predecessor in interest to Travana. Chen is now Travana's Chief Executive Officer.

31. The assets that Travana acquired in the Airfast Bankruptcy 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.” Upon information and belief, such “source code” included Fareportal’s Copyrights, including the copyrighted underlying source code for FP4 that Seyalioglu misappropriated.

32. Fareportal never received notice of the Airfast Bankruptcy and only learned of the existence of the bankruptcy case through a third-party on or about August 1, 2016.

C. Seyalioglu is Hired By Travana and, Upon Information and Belief, Travana is Using Fareportal’s Trade Secrets and Confidential and Proprietary Information, Including the Copyrighted Underlying Source Code for FP4

33. On or about July 8, 2016, Fareportal learned that Seyalioglu had commenced employment at Travana as its Chief Technology Officer.

34. In light of the substantial similarities between Fareportal’s Copyrights and, among other things, the features, structures, user interface and functionality of Janbala, upon information and belief, Seyalioglu and Travana used and incorporated the copyrighted underlying source code for FP4 in connection with its the design and launch of the Janbala OTA.

35. Upon information and belief, Defendants are currently using the Fareportal’s trade secrets and confidential and proprietary information, including the underlying source code for FP4 that Seyalioglu misappropriated.

A REVIEW OF JANBALA REVEALS THAT TRAVANA HAS INCORPORATED THE COPYRIGHTS IN THE UNDERLYING SOURCE CODE

36. On or about June 15, 2016, Travana launched Janbala. Since the introduction of this competing OTA, Fareportal has investigated the limited information available to the

public regarding the functionality of Janbala, and identified compelling evidence that Travana incorporated the Copyrights in Janbala.

37. Several of Janbala's components are substantially similar to the same components of Fareportal's OTAs, including: the flight and hotel search strings, the booking identification and globally unique identifier ("GUID") systems, passenger types, and the implementation of specific confirmation and customer information pages.

38. The substantial similarity between the terms used in Fareportal's underlying source code and the search strings generated by Janbala can only be the result of Travana's misappropriation and infringement of the Copyrights, including FP4.

39. When a customer visits an OTA website and runs a search (by inputting or selecting options like city destinations), the URL at the top of the web browser will typically display a "search string." That search string includes some or all of the options the user selected, in the format of field name (also called a "variable name") followed by the value.

40. Fareportal ran sample searches on Janbala on or around September 22, 2016, and the block paragraph below is the resulting search string. Buried within the search string are field names like "NumberOfAdults." For the Court's convenience, the field names and values are bolded and underlined:

<http://www.janbala.com/Flight/Search?searchRequest.OriginAirportCode=JFK&searchRequest.DestinationAirportCode=JAX&searchRequest.TripType=Roundtrip&searchRequest.NumberOfAdults=1&searchRequest.NumberOfSeniors=1&searchRequest.NumberOfChildren=0&searchRequest.NumberOfInfantsWithSeat=1&searchRequest.NumberOfInfantsWithoutSeat=0&searchRequest.NumberOfYoungAdults=0&searchRequest.DepartureDate=9%2F29%2F2016&TimeOfDepart=9%2F29%2F2016&searchRequest.ReturnDate=10%2F3%2F2016&TimeOfReturn=10%2F3%2F2016&searchRequest.ClassOfService=Economy&searchR>

equest.**PreferredAirlinesLabel**=&searchRequest.**PreferredAirlines**=&searchRequest.**IsSearchOnlyDirectFlights**=**False**&searchRequest.**ClassOfService**=**Economy**

41. The field names are all crafted by the software engineers writing the underlying source code. Innumerable permutations are available to engineers to be used as a field name. Field names in source code are like passwords or unique fingerprints, where capitalization matters, certain special characters can be used, and no spaces are allowed. For example, other than “NumberOfAdults,” the coder could have chosen to use “numberOfAdults” (no initial capital), “NumberAdults” (no preposition), “Num_Adults” (with underscore), and so on. Coders typically choose the shortest and most concise field names that will convey the information clearly. Thus, the field name “NumberOfAdults,” reflected in Janbala’s search string, is an unusual and unique choice. Priceline.com’s and Justfly.com’s search strings, for example, use “num-adults” and “num_adults,” respectively. Note that these field names have abbreviated words, no capitals, special characters, and are shorter overall.

42. What Fareportal discovered in running the sample search on Janbala is that many of its field names are identical to those used in Fareportal’s confidential source code. For example, Fareportal’s code uses “NumberOfAdults.” Fareportal also uses “NumberOfSeniors” and “ClassOfService” in its code, among other exact or nearly exact matches. Below is a table of various field names in Fareportal’s confidential source code, alongside equivalent field names in Janbala’s sample search string, with exact or nearly exact matches:

<u>Fareportal</u>	<u>Travana</u>
ClassOfService	ClassOfService

DepartureDate	DepartureDate
NumberOfAdults	NumberOfAdults
NumberOfChilderen <i>[sic]</i>	NumberOfChildren
NumberOfinfantInLap	NumberOfInfantsWithoutSeat
NumberOfinfantOnSeat	NumberOfInfantsWithSeat
NumberOfSeniors	NumberOfSeniors
NumberOfYouths	NumberOfYoungAdults
ReturnDate	ReturnDate

43. On or about December 15, 2016, Fareportal ran another sample search on Janbala, and discovered that Travana had changed some field names. Provided below are those field names that have been changed, where before they were exactly or nearly exactly the same as those used in Fareportal's confidential source code:

<u>Fareportal</u>	<u>Travana (as of September 22, 2016)</u>	<u>Travana (as of December 15, 2016)</u>
ClassOfService	ClassOfService	PreferredCabinType
NumberOfAdults	NumberOfAdults	Adults
NumberOfChilderen <i>[sic]</i>	NumberOfChildren	Children
NumberOfinfantInLap	NumberOfInfantsWithoutSeat	InfantOnLap
NumberOfinfantOnSeat	NumberOfInfantsWithSeat	Infant
NumberOfSeniors	NumberOfSeniors	Seniors
NumberOfYouths	NumberOfYoungAdults	[No Longer Available]

44. Upon information and belief, Travana has changed at least some of its field names in an attempt to hide its misappropriation of Fareportal's trade secrets and

confidential and proprietary information. In fact, during the time period between when Fareportal obtained the first sample search string from Janbala, and the December 15, 2016 search, Fareportal informed Travana that Fareportal believed Travana was infringing upon its source code and Fareportal sought discovery regarding that source code in connection with separate State court litigation against Ware and Travana.

45. All of foregoing suggests Travana copied Fareportal's underlying code. However, Travana's underlying source code is exclusively under Travana's control.

46. Another substantial similarity indicating Travana copied Fareportal's code is Travana's use of a Global Unique Identifier ("GUID") in its booking confirmation numbers for customers. A GUID is typically a string of 32 "hexadecimal" digits (which can be 0 through 9, the capitalized letters A through F, or the lower-case letters a through f), separated by four hyphens. The GUID is generated in a way that will be unique within the particular system it is used in. Using a GUID is one way an OTA can ensure the booking number for a customer is unique, and therefore more secure from hackers.

47. Fareportal has long used a GUID in connection with its OTAs. Not all OTAs, however use a GUID in conjunction with a booking number.

48. Janbala, created earlier this year, uses a GUID. Travana appends the GUID confirmation number to the URL of Janbala's booking confirmation page, after the customer books the flight or hotel. An example of a Janbala OTA booking, with the GUID bolded, is set out below:

<http://www.janbala.com/Flight/BookedFlightTripRules?bookingDate=09%2F22%2F2016%2021%3A30%3A10&bookingGuid=19D2E8B1-DEDC-4C10-AD4B-8690053F1232>

49. Fareportal likewise uses a GUID as a booking number. An example of a Fareportal OTA booking on CheapOair.com, with the GUID bolded, is set out below:

<https://www.cheapoair.com/confirmation?guid=28441c31-516e-433d-9812-8dc3e52d3383>

50. In addition, Travana's coders have copied the "passenger types" used for airline bookings. Fareportal classifies its passengers as (i) "adults," (ii) "seniors," (iii) "children," (iv) "infants on lap," and (v) "infants on seat." Travana follows the identical five passenger classifications on Janbala.

51. No other OTA follows these "passenger type" classifications. Indeed, prior to Janbala's launch, no other OTAs collectively provided the "senior," "infant on lap," and "infant on seat" passenger classifications.

52. Travana also uses substantially similar language and layouts to those implemented by Fareportal for its booking confirmation page, legal confirmation, passport and visa holder information page, terms and conditions and contact form.

53. Furthermore, Fareportal uses a .NET programming framework (the ".NET Framework") to run its OTAs. Prior to Janbala's launch, Fareportal operated the only major OTAs that use the .NET Framework.

54. Travana is also using the .NET Framework on Janbala. Travana is actively recruiting software engineers trained in the .NET Framework. Upon information and belief, Travana is targeting engineers trained in the .NET Framework in order to further target Fareportal's trade secrets and confidential and proprietary information, including the Copyrights, and to incorporate this material into Travana's systems.

55. Based upon the substantially similar components described above, the underlying source code for operating Janbala mirrors Fareportal's source code for FP4 and its other Copyrights. The Travana source code is particularly within the control of Travana and Travana has refused to provide its source code to a neutral third-party on a confidential basis for the

purpose of comparing that source code to FP4, the Copyrights and Fareportal's other source code despite Fareportal's repeated demand that Travana agree to such a procedure.

**TRAVANA COULD NOT HAVE LAUNCHED JANBALA AS QUICKLY AS IT DID
WITHOUT AN EXISTING CODE BASE**

56. The OTAs offered by Fareportal utilizing the Copyrights took years to be designed, developed and tested before they could be offered to the public.

57. Janbala, however, was introduced and offered to the public by Travana within months of Travana commencing operations.

58. Upon information and belief, Travana commenced active business operations in or around January 2016. Janbala, in turn, was introduced to the public less than six months later, on or about June 15, 2016.

59. The launch of an OTA in that brief of a timeframe without an existing code base would be nearly impossible and would require an infrastructure of dozens of engineers working around the clock.

60. Travana has admitted that it only employs 73 people, most of whom were hired in 2016. Travana has also portrayed itself to be a relatively modest start-up operation. This is clearly not the type of infrastructure that would be necessary to develop and launch a fully functioning OTA within just over six months.

61. Upon information and belief, Travana was able to launch Janbala in such a short period of time only by infringing upon the Copyrights misappropriated by Seyalioglu.

**TRAVANA'S, WARE'S AND KUMAR'S MISAPPROPRIATION OF
FAREPORTAL'S TRADE SECRETS AND CONFIDENTIAL AND PROPRIETARY
FINANCIAL AND MARKETING INFORMATION**

62. Having already misappropriated Fareportal's code base through Seyalioglu, Travana continued to misappropriate Fareportal's trade secrets and confidential and

proprietary information by actively recruiting Fareportal's senior executives, and utilizing highly sensitive and competitively invaluable information that such employees improperly took from Fareportal.

A. Jason Ware Misappropriates Fareportal's Trade Secrets and Confidential and Proprietary Information Regarding Fareportal's Marketing Programs

63. In 2013, Fareportal decided to create and launch a loyalty and 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.

64. The Associate Director, Loyalty & CRM would be responsible for creating Fareportal's CRM & Loyalty Department (the "Department").

65. The Department would be responsible for, among other things, developing, implementing and maintaining expansive customer loyalty programs, developing a customer database and analyzing such data to allow Fareportal to better understand customer needs, preferences and purchasing trends, improve customer relations, increase the customer base and customer retention rates, determine how to best target new potential customers and set pricing at rates that would better attract customers and potential customers.

66. Fareportal undertook an exhaustive search to find its first Associate Director, Loyalty & CRM and considered over 70 candidates during that time. After completing the search, Ware was hired on October 29, 2013 as Associate Director, Loyalty & CRM.

67. As the Associate Director, Loyalty & CRM, Ware created and then managed the Department. The Department was responsible for all aspects of Fareportal's customer generation, development and retention efforts as well as the collection and analysis of Fareportal's customer data, marketing efforts and pricing strategies. Fareportal provided Ware

with resources to develop the Department, including access to Fareportal's customer and business model information, as well as access to certain of the Copyrights.

68. In order to assist Ware in the performance of his job duties, Fareportal provided him with access to certain of its well-protected trade secrets and confidential and proprietary information. Ware was provided with special privileges to access all Fareportal 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.

69. 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.

70. Ware was also provided with extensive access to Fareportal's source code, software and systems, including the Copyrights. Specifically, Ware had access to the BI System.

71. Additional types of trade secrets and confidential and proprietary information to which Ware was provided access – and some of which Ware helped to create – includes, but is not limited to: (i) business plans and models; (ii) customer profile databases; (iii) customer contact information; (iv) pricing plans, marketing strategies and future plans with respect to customers; (v) contracts with CRM software suppliers and other vendors, which set forth the key terms of such relationships, which Fareportal negotiated; (vi) repeat booking statistics; (viii) numerous analytics reports; (vii) passenger detail schematics; (viii) customer booking details; and (ix) website traffic source information.

72. None of Fareportal's trade secrets and confidential and proprietary information is publicly available, and Fareportal has taken significant steps to protect the same.

73. Fareportal maintains a Global Security Unit ("GSU") that constantly works on protecting this information from being accessed by unauthorized users, both inside and outside the Company.

74. Fareportal also protects this information through the use of well-guarded passwords that are only distributed to a limited number of employees at Fareportal who need access to such information in order to perform their assigned tasks.

75. Fareportal also maintains employment policies that prohibit employees from, among other things, connecting external devices (i.e., external hard drives, USB flash drives, cell phone chargers, adaptors) to Fareportal's systems. The GSU is responsible for continually paroling and enforcing these policies and employees who violate such policies are subjected to disciplinary action up to and including termination of employment.

76. Fareportal also requires all of its employees, including Ware, to sign confidentiality agreements. Fareportal also requires vendors and other third parties with which it does business to sign non-disclosure agreements before Fareportal will engage in negotiations with such parties.

77. On or about June 17, 2016, Ware notified Fareportal of his intent to resign from his employment, effective July 1, 2016. Ware never informed Fareportal of his intent to work for Travana.

78. On July 1, 2016, which was Ware's last day of employment at Fareportal, a member of Fareportal's Human Resources team met with Ware and reminded him of his post-

employment obligations to Fareportal as well as his obligation to notify any future employer of such post-employment obligations.

79. On or about July 8, 2016, Fareportal learned that Ware had begun working at Travana as its Director, Loyalty & CRM. Upon information and belief, Ware is performing the exact same duties for Travana that he performed while employed at Fareportal.

80. 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 and confidential and proprietary information, including the Copyrights, to do so.

81. After Fareportal learned that Ware had commenced employment at Travana in breach of the Agreement, Fareportal began reviewing and continues to review Ware's email activity on his Fareportal email account.

82. As a result of that review, Fareportal learned 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.

83. 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.

84. Fareportal further learned that Ware had started developing business models for Travana while still employed by Fareportal. On June 8, 2016, Ware forwarded to his personal email account a Loyalty Strategy and Loyalty Rewards Program model that he had prepared for Travana while still employed by Fareportal (the "Travana Model").

85. In the Travana Model, Ware specifically highlighted that Travana would “[n]eed to understand internal projections first, to decide what the [program’s customer membership] fee could be.” Immediately after creating the Travana Model, Ware proceeded to forward to his personal email the very types of information, which were proprietary to Fareportal, that he highlighted as needing to create a customer loyalty program for Travana.

86. On June 10, 2016, – two days after Ware forwarded the Travana Model to himself – Ware sent himself a multi-tab spreadsheet titled “Synchrony Financial Visa FP Cobrand Model V3.xls” (the “Credit Card Program Model”). The Credit Card Program Model contains an abundance of Fareportal’s trade secrets and confidential and proprietary information regarding its Credit Card Program. For example, it contains confidential Fareportal financial data such as total air travel revenue, tickets issued, hotel sales, rooms booked, and car rental revenue generated from Fareportal’s One Travel and CheapOAir websites for 2013 through March 2015. The Credit Card Program Model uses this proprietary financial data to calculate, among other things: (i) the number of new credit card accounts that will be opened based upon a percentage of gross sales; and (ii) the growth and profitability of Fareportal’s Credit Card Program over a seven year period.

87. On June 16, 2016 – one day before he provided Fareportal with his resignation notice – Ware emailed himself a document containing depictions of Fareportal’s credit card artwork designs.

88. On June 17, 2016, the same day Ware provided Fareportal with notice of his resignation to Fareportal, Ware emailed to his personal email account two reports regarding Fareportal’s Customer Loyalty Program and email signups (the “Fareportal Customer Loyalty Program Reports”). The Fareportal Customer Loyalty Program Reports contain vital and

confidential statistics and information regarding Fareportal's customers that can guide Travana in creating its own loyalty program in a number of ways. For example, the Fareportal Customer Loyalty Program Reports contains data regarding how many people have enrolled in Fareportal's Customer Loyalty Program, how many bookings are being generated from the program, and what percentage of those participants are redeeming loyalty points. This information would be critical to Travana as it designs and implements its own customer loyalty program because it would be able to determine the expected growth rate for its nascent loyalty program, how to properly allocate loyalty points against this projected growth rate, and how the rewards offered by their program would impact Travana's bottom line – all without having to test those impacts through years of trial and error, like Fareportal was required to do.

89. The Fareportal Customer Loyalty Program Reports also contain data reflecting when users are most inclined to enroll in Fareportal's Customer Loyalty Program on a monthly, weekly and hourly basis, which forms of advertising are most effective in getting users to enroll in Fareportal's Customer Loyalty Program and which webpages are most frequently used to enroll in the program. This information can be used by Travana to optimize the timing and placement of their marketing and advertising, and determine how to best incorporate their loyalty program into Travana's customer-facing website.

90. On June 22, 2016 – five days after Ware provided Fareportal with his resignation notice – Ware emailed himself a multi-tab Excel spreadsheet titled "Loyalty Rewards Program Model OT.xls" (the "Fareportal Customer Loyalty Program Model"). The Fareportal Customer Loyalty Program Model contains the very internal projections that Ware admits in the Travana Model were necessary for him to review in order to create a customer loyalty program for Travana.

91. The Fareportal Customer Loyalty Program Model contain the projections and proprietary data necessary to create a financially viable customer loyalty program, including customer loyalty points earned by Fareportal customers, redemption rates of those points, and the program's impact on net revenue, and also contains actual confidential Fareportal financial data for 2012 through August 2014. This confidential financial data includes, among other things, total air travel revenue, tickets issued, hotel sales, rooms booked, and car rental revenue generated from Fareportal's One Travel website. None of this information is publically available nor was it accessible to Fareportal employees other than a limited few, including Ware.

92. The Fareportal Customer Loyalty Program Model also provides a template that contains a Fareportal proprietary formula that Travana can now use to quickly create a financially viable customer loyalty program. For example, Travana can use the template to enter, calculate and analyze its own data to determine how to make its loyalty program profitable and, with the Fareportal Customer Loyalty Program's historical data in hand, how to best compete against Fareportal. Travana can also calculate the potential success of their own loyalty program based upon projections and underlying proprietary data that Fareportal developed over a decade of operating its own OTAs. Rather than spending months or years to create their own model and generate their own underlying data – like Fareportal did – Travana can now use the Fareportal Customer Loyalty Program Model to create a mature and fully functional customer loyalty program in a matter of days or weeks.

93. On June 23, 2016 – six days after Ware provided Fareportal with his resignation notice – Ware emailed himself Fareportal's draft customer communications and advertisements.

94. Ware has also forwarded himself other emails containing, Fareportal source code, profit and loss statements, multiple designs of Fareportal's Credit Card Program artwork,

Fareportal user profile signup materials, total booking and total hit reports, and designs for Fareportal's rewards programs.

95. On September 18, 2015 and again on September 22, 2015, Ware emailed himself Fareportal's profit and loss statements.

96. On October 2, 2015, Ware emailed himself Fareportal source code. The source code that Ware emailed himself incorporated a portion of the Copyrights, namely a portion of the BI System, and would enable Ware and Travana to create a business intelligence system substantially similar to Fareportal's copyrighted BI System.

97. On May 27, 2016, Ware emailed himself designs of Fareportal's Credit Card Program artwork.

98. Given that Ware was able to access Fareportal's databases, computer systems and mainframes remotely throughout his employment, there was no legitimate basis for him to send work-related emails, internal Fareportal correspondence, copies of Fareportal documents, information propriety to Fareportal, and/or Copyrights to his personal email account.

99. To date, Fareportal has discovered no less than ten separate emails wherein Ware misappropriated Fareportal's trade secrets and confidential and proprietary information, including Copyrights. 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.

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

101. On August 1, 2016, Fareportal commenced an action in the Supreme Court of the State of New York against Travana and Ware regarding, among other things, Ware's breach of his Fareportal employment agreement.

102. Also on August 1, 2016, Fareportal successfully obtained a TRO against Travana and Ware prohibiting them and their employees, officers, agents, subsidiaries or affiliates from using, referencing, or relying on any of Fareportal's trade secrets and confidential and proprietary information. This prohibition necessarily included Fareportal's software, source code and the Copyrights.

B. Kumar Misappropriates Fareportal's Trade Secrets and Confidential and Proprietary Information Regarding Fareportal's Finances

103. In May 2006, Fareportal hired Kumar in the position of Senior Vice President of Finance. As the Senior Vice President of Finance, Kumar was one of the ten most senior employees at Fareportal. Kumar held the position of Senior Vice President of Finance until his employment with Fareportal ended in July 2016.

104. As the Senior Vice President of Finance, Kumar was instrumental to Fareportal's growth and day-to day operations, as he was responsible for, among other things: (i) revenue and cost optimization; (ii) budgeting and preparing financial statements; (iii) business trend analysis; (iv) procuring corporate insurance; (v) managing transfer pricing details and audits; (vi) global negotiation and implementation of multi-currency merchant accounts with alternate payment types and banking relations; (vii) vendor negotiations; (viii) fraud and risk management oversight; and (ix) overseeing the launching of Fareportal call centers.

105. In order for Kumar to complete his job duties, Kumar was given access to a wide-variety of Fareportal's most valued trade secrets and confidential and proprietary information, including: (i) financial data; (ii) marketing data; (iii) operational information; (iv) Fareportal's

business model and revenue model; (v) customer data, such as address and credit card information; (vi) audit and quality control information; (vii) call center logistics; (viii) confidential contract terms with third parties such as airlines, marketing companies, banks, and vendors; and (ix) back end processes, such as ticketing. Simply stated, Kumar was one of the few Fareportal employees provided with unfettered access to virtually all of Fareportal's vital and closely guarded proprietary information.

106. On May 23, 2016, Kumar formally notified Fareportal of his intent to resign from his employment, effective May 27, 2016. Kumar never informed Fareportal of his intent to work for Travana.

107. On May 27, 2016, Kumar's final day in Fareportal's offices, Kumar approached Fareportal's IT Help Desk Manager, Sergio Dacunah ("Dacunah"), and instructed him to delete all information from and wipe clean certain Fareportal devices that Fareportal had provided to Kumar for him to use in connection with his employment at Fareportal. Dacunah was not aware that Kumar had provided Fareportal with notice of his intent to resign or that May 27, 2016 was going to be Kumar's last day of employment at Fareportal.

108. While Dacunah did not typically wipe employee hard drives, since Kumar was one of the highest ranking executives at Fareportal, Dacunah did what he was asked.

109. Following Kumar's instructions, Dacunah went to Kumar's office where Kumar took two laptops out of his suitcase - a newer Lenovo laptop, and an older Toshiba laptop. Kumar then placed both laptops on the table and told Dacunah to "format the hard drive on both machines." Dacunah asked Kumar if the laptops were his personal computers or if they belonged to Fareportal. Kumar lied to Dacunah and told him that the laptops were his personal computers.

110. Dacunah then asked Kumar if he was sure that he wanted the hard drives formatted because that will delete everything on both machines. Kumar answered “yes.”

111. However, before Dacunah was able to complete this process, Kumar instructed him to leave his office and Kumar left the building with other Fareportal colleagues. Kumar never contacted Dacunah again.

112. At the end of the day on May 27, 2016, Kumar left the Toshiba and Lenovo laptops on his Fareportal desk and sent a photo of what he had left on his desk to a number of Fareportal employees. However, without informing anyone at Fareportal and without permission to do so, Kumar removed the hard drive from the Lenovo laptop and did not return it. Upon information and belief, Kumar remains in possession of such hard drive.

113. In light of Kumar’s senior position at Fareportal, Kumar remained as a paid employee of Fareportal until July 22, 2016 while Kumar and Fareportal attempted to negotiate a separation agreement.

114. The negotiation of a separation agreement carried on for a number of months and, ultimately, resulted in no agreement being reached due to Kumar’s outlandish demand that Fareportal pay him \$5 million.

115. Upon learning that Fareportal was unwilling to accede to his demands, Kumar threatened Fareportal that if it did not pay him \$5 million he would take actions that “will not be in anyone’s interest.” Notwithstanding Kumar’s threat, Fareportal again refused to agree to his extortionate demands.

116. In late July/early August 2016, a number of Fareportal employees reported to human resources personnel at Fareportal that Kumar was contacting them to, among other things,

disparage Fareportal and its executives and to obtain Fareportal's trade secrets and confidential and proprietary information.

117. As a result of such interactions, on August 8, 2016, Fareportal, through its counsel Sheppard, Mullin, Richter & Hampton LLP, sent Kumar a letter: (i) asking that he cease and desist from contacting Fareportal employees; (ii) reminding him that removing or transmitting Fareportal property or data from Fareportal's premises or computer systems is prohibited; and (iii) reminding him of his post-employment obligations to Fareportal, including an ongoing duty of loyalty to Fareportal (the "August 8, 2016 Letter").

118. At or around this time, Fareportal also learned that Kumar had taken the Lenovo laptop's hard drive without informing anyone at Fareportal that he had done so and without permission to do so.

119. As a result, Fareportal, through its counsel, sent a letter to Kumar, dated August 18, 2016, in which Fareportal demanded the return of the hard drive and any other documents that Kumar took from Fareportal (the "August 18, 2016 Letter").

120. By email dated August 21, 2016, Kumar denied that he was in possession of the hard drive or any other Fareportal information.

121. Immediately after learning that Kumar had taken the Lenovo laptop's hard drive, Fareportal further investigated Kumar's conduct while employed at the Company. As a result, Fareportal learned that, at various times during his employment with Fareportal, Kumar sent emails either to or from his personal email account, nishithvarma@hotmail.com, in which he forwarded to himself internal Fareportal correspondence and copies of Fareportal documents detailing, among other things, software changes and enhancements to be made at Fareportal.

122. Given that Kumar was able to access Fareportal's databases, computer systems and mainframes remotely throughout his employment, there was no legitimate basis for him to send work-related emails, internal Fareportal correspondence and copies of Fareportal documents to his personal email account.

123. Fareportal also discovered that Kumar was communicating with certain employees of Travana via LinkedIn in April and May 2016 – shortly before Kumar resigned from Fareportal. These contacts included, making contact with Travana's CEO, Jason Chen, and communicating with Seyalioglu about obtaining a senior finance position at Travana – a position very similar to the one that Kumar held with Fareportal.

124. As a result of these discoveries, Fareportal's counsel sent Kumar a letter dated September 23, 2016 (the "September 23, 2016 Letter"), detailing what had been discovered, inviting Kumar to explain why he was engaging in such acts, and demanding that he return all property and information that he took from Fareportal. The September 23, 2016 Letter also asked Kumar to confirm in writing that he was not competing with Fareportal, and that he had not accepted employment with Travana.

125. Kumar never responded to the September 23, 2016 Letter and, as Fareportal discovered on December 9, 2016, is now employed by Travana.

C. Travana's Targeting of Other Fareportal Employees

126. In addition to hiring former Fareportal employees Seyalioglu, Kumar and Ware, Travana currently employs at least four other former Fareportal employees.

127. All told, Travana currently employs seven former Fareportal employees – approximately 10% of Travana's entire workforce.

128. Upon information and belief, Travana, through Seyalioglu, Kumar and/or Ware, with full knowledge of Fareportal's employment agreements with its employees, is currently in the process of trying to recruit Fareportal employees to work for Travana in order to obtain more of Fareportal's confidential and proprietary information and trade secrets, with the overall intent and purpose of obtaining a competitive advantage over Fareportal through improper and illicit means.

COUNT I

COPYRIGHT INFRINGEMENT (Against All Defendants)

129. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 128 above as if fully set forth herein. At this time, Fareportal is only asserting this claim with respect to its copyright in FP4.

130. The Copyrights are original works of authorship and constitute copyrightable subject matter under the copyright laws of the United States, 17 U.S.C. § 101, *et seq.* The copyright in FP4 has been registered with the Copyright Office under Registration Number TX 8-272-588. Fareportal is the owner of all right, title, and interest to the FP4 copyright registration, as well as the other Copyrights that are in the process of being registered, and has complied in all respects with the laws governing copyright.

131. In compliance with copyright regulations, Fareportal filed with the Copyright Office a copyright application, the registration fee and a deposit of the works being registered. As such, the effective date of the copyright registration for FP4 was December 2, 2016.

132. As owner of the FP4 copyrights, Fareportal enjoys the exclusive right to, among other things, reproduce FP4, prepare derivative works and distribute copies of FP4.

133. Through Travana's employment of Seyalioglu, Kumar and Ware, Defendants had access to the FP4 and the other Copyrights and, upon information and belief, copied all or a portion of FP4 and the other Copyrights.

134. Upon information and belief, based upon the investigation and analysis of Fareportal described above, as well as Defendants' access to the Copyrights through Travana's employment of Seyalioglu, Kumar and Ware, Defendants without authorization copied significant portions of FP4 and the Copyrights in connection with Janbala.

135. Upon information and belief, based upon the investigation and analysis of Fareportal described above, as well as Defendants' access to the Copyrights through Travana's employment of Seyalioglu, Kumar and Ware, Defendants without authorization created, reproduced and distributed derivative works from FP4 and the Copyrights in connection with Janbala.

136. Upon information and belief, based upon the investigation and analysis of Fareportal described above, as well as Defendants' access to the Copyrights through Travana's employment of Ware Seyalioglu, and Kumar, Defendants directly infringed and will continue to infringe upon FP4 and the Copyrights by operating Janbala.

137. Upon information and belief, Defendants' infringement was deliberate, willful and in disregard of Fareportal's rights, and it was committed for the purpose of commercial gain.

138. The infringement of FP4 and Fareportal's other Copyrights by Defendants has harmed and will continue to irreparably harm Fareportal unless restrained by this Court. Fareportal's remedy at law is not adequate, by itself to compensate for the harm inflicted and threatened by Defendants. Thus, in addition to all other remedies to which it

is entitled, Fareportal is entitled to injunctive relief restraining Defendants, their officers, agents, employees and all persons acting in concert with Defendants from engaging in further acts of copyright infringement as described herein.

139. As a direct and proximate result of Defendants' copyright infringement, Fareportal has suffered, and will continue to suffer, monetary loss to its business reputation and goodwill. Fareportal is also entitled to recover from Defendants the damages Fareportal has suffered and will continue to suffer as a result of Defendants' infringement in actual amounts to be proven at trial and including, but not limited to, any and all gains, profits, and advantages Defendants have obtained as result of their infringement. In the alternative, Fareportal entitled to statutory damages under the Copyright Act.

140. Fareportal is also entitled to recover its attorneys' fees and costs of suit in accordance with the Copyright Act.

COUNT II

VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. §§ 1030 *ET SEQ.* (Against Ware)

141. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 140 above as if fully set forth herein.

142. Fareportal's internal computers and databases are used in interstate commerce.

143. In violation of the Computer Fraud and Abuse Act, Ware intentionally accessed Fareportal's computers and databases, printed, downloaded, or emailed himself trade secrets and confidential and proprietary information from such computers and databases, and, upon information and belief, provided such trade secrets and confidential and proprietary information to Travana, all in excess of Ware's authorized access to Fareportal's computers and databases.

144. Upon information and belief, Ware was acting as an agent of Travana when he acted in excess of his authorized access to Fareportal's computers and databases.

145. Ware acted in a manner to misappropriate information, including trade secrets and confidential and proprietary information, from Fareportal's computers and databases for the purpose of benefiting himself and Travana, and for the purpose of wronging and injuring Fareportal.

146. Ware's access in excess of his authorization caused Fareportal losses that are difficult, if not impossible, to quantify, but are in an amount substantially more than \$5,000.

147. Ware's actions threaten to or have caused Fareportal irreparable harm in the form of loss of its business and contractual relationships, diminished value of its trade secrets and confidential and proprietary information, harm to its goodwill and reputation, and loss of its employees.

148. Ware's actions will continue to cause irreparable harm and damages to Fareportal if not restrained.

COUNT III

VIOLATION OF THE DEFEND TRADE SECRETS ACT, 18 U.S.C. §1836 (Against Travana, Ware and Kumar)

149. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 148 above as if fully set forth herein.

150. The Defend Trade Secrets Act ("DTSA") of 2016, Pub. L. No. 114-153, 130 Stat. 376, which was passed into law on May 11, 2016 and amends chapter 90 of Title 18 of the United States Code, forbids threatened and actual misappropriation of trade secrets "if the trade

secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.” 18 U.S.C. § 1836(b)(1) (as amended).

151. Under the DTSA, “trade secret” means “all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if, (A) the owner thereof has taken reasonable measures to keep such information secret, and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.” 18 U.S.C. § 1839(3) (as amended).

152. Under the DTSA, “misappropriation” means “(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (B) disclosure or use of a trade secret of another without express or implied consent by a person who: (i) used improper means to acquire knowledge of the trade secret; or (ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was: (I) derived from or through a person who had used improper means to acquire the trade secret; (II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or (iii) before a material change of the position of the person, knew or had

reason to know that (I) the trade secret was a trade secret and (II) knowledge of the trade secret had been acquired by accident or mistake.” 18 U.S.C. § 1839(5) (as amended).

153. Under the DTSA, “improper means” “(A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and (B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition.” 18 U.S.C. § 1839(6) (as amended).

154. Certain confidential and proprietary information of Fareportal constitutes trade secrets related to a product or service used in, or intended for use in, interstate commerce, including, but not limited to, its: (i) business plans and models; (ii) customer profile databases; (iii) customer contact information; (iv) pricing plans, marketing strategies and future plans with respect to customers; (v) contracts with CRM software suppliers and other vendors, which set forth the key terms of such relationships, which Fareportal negotiated; (vi) repeat booking statistics; (viii) numerous analytics reports; (vii) passenger detail schematics; (viii) customer booking details; (ix) website traffic source information; (x) source code; (xi) software; and (xii) the Copyrights.

155. Fareportal derives economic value from the fact that its trade secrets and confidential and proprietary information, including its: (i) business plans and models; (ii) customer profile databases; (iii) customer contact information; (iv) pricing plans, marketing strategies and future plans with respect to customers; (v) contracts with CRM software suppliers and other vendors, which set forth the key terms of such relationships, which Fareportal negotiated; (vi) repeat booking statistics; (viii) numerous analytics reports; (vii) passenger detail schematics; (viii) customer booking details; (ix) website traffic source information; and

(x) source code; (xi) software; and (xii) the Copyrights, are not generally known to individuals or entities outside of Fareportal.

156. Fareportal takes reasonable measures to protect the secrecy of such trade secrets and confidential and proprietary information. These measures include maintaining a GSU that constantly works on protecting this information from being accessed by unauthorized users, both inside and outside Fareportal, utilizing well-guarded passwords that are only distributed to a limited number of employees at Fareportal who need access to such information in order to perform their assigned tasks, requiring all of its employees to sign confidentiality provisions, and requiring vendors and third parties to sign non-disclosure agreements before commencing negotiations.

157. Ware and Kumar knew they had a duty to maintain the secrecy of Fareportal's trade secrets and confidential and proprietary information due, in part, to their fiduciary duties and duties of loyalty to Fareportal and Ware's acknowledgement of such duties under his employment agreement.

158. Travana is under a duty to not accept any misappropriated trade secrets and confidential and proprietary information, including Fareportal's trade secrets and confidential and proprietary information, and Travana is also under a duty not to disclose or use misappropriated trade secrets and confidential and proprietary information for the purpose of gaining a competitive advantage in the marketplace.

159. Upon information and belief, Travana, Ware and Kumar have already and/or will improperly acquire, disclose, and use Fareportal's trade secrets and confidential and proprietary information without consent of any kind for their own financial gain.

160. Ware and Kumar will continue to disclose and utilize Fareportal's trade secrets and confidential and proprietary information in the course of their employment with Travana by using this information to unfairly compete with Fareportal by developing, among other things, Travana's CRM and customer loyalty department and strategy, and Janbala.

161. Travana, Ware and Kumar's actions constitute actual and/or threatened misappropriation in violation of the DTSA.

162. Fareportal has suffered irreparable damages as a result of Travana, Ware and Kumar's actual and/or threatened breach of the DTSA, including loss of customers and employees, harm to its goodwill and reputation, and an unfair reduction in its competitive advantage.

163. Fareportal is entitled to actual damages from Travana, Ware and Kumar, jointly and severally, and for attorneys' fees.

164. Fareportal's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory relief.

165. Travana, Ware and Kumar's actions will continue to cause irreparable harm and damages to Fareportal and its trade secrets and confidential and proprietary information if not restrained.

COUNT IV

AN ACCOUNTING (Against All Defendants)

166. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 165 above as if fully set forth herein.

167. As a direct and proximate result of Defendants' acts as alleged herein, Fareportal has been injured in its business, goodwill, and property, and has sustained substantial damage,

while Defendants have profited at Fareportal's expense in an amount not presently known. The amount of the gains, profits, benefits, advantages, and revenues wrongfully realized by Defendants from their acts as alleged herein is unknown to Fareportal and cannot be ascertained without an accounting. The information needed to establish that amount due is peculiarly within the knowledge of Defendants. Fareportal, therefore, demands an accounting for the aforementioned gains, profits, benefits, advantages, and revenues wrongfully realized by Defendants for their activities as alleged herein.

COUNT V

BREACH OF FIDUCIARY DUTY AND DUTY OF LOYALTY (Against Kumar)

168. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 167 above as if fully set forth herein.

169. By virtue of Kumar's employment relationship with Fareportal, Fareportal reposed trust and confidence in Kumar to provide services, and to refrain from acting in any manner contrary to Fareportal's interests.

170. Kumar undertook such trust and confidence.

171. By reason of the foregoing, Kumar owed Fareportal a fiduciary duty and duty of loyalty to act in good faith and in Fareportal's best interest.

172. Such fiduciary duty and duty of loyalty owed by Kumar to Fareportal existed throughout his employment with Fareportal and survived the termination of that employment.

173. Kumar breached his fiduciary duty and duty of loyalty to Fareportal by engaging in the wrongful activity as described herein, including but not limited to, the misappropriation of Fareportal's trade secrets and confidential and proprietary information for his benefit and the benefit of Travana, a direct competitor of Fareportal.

174. Kumar's actions were and are willful and malicious and without legal justification or excuse.

175. Kumar's breach of his fiduciary duty and duty of loyalty will directly and proximately cause substantial damage to Fareportal and its business, including damage to its reputation.

176. Kumar's breach of his fiduciary duty and duty of loyalty will directly and proximately cause Fareportal to suffer great and irreparable damage and injury, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Fareportal. Fareportal will continue to suffer by the continued acts of Kumar.

COUNT VI

MISAPPROPRIATION OF TRADE SECRETS (Against Travana and Kumar)

177. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 176 above as if fully set forth herein.

178. In the course of doing business, Fareportal has acquired and developed highly valuable, trade secrets and confidential and proprietary information.

179. Fareportal has taken significant steps to protect its trade secrets and confidential and proprietary information including, maintaining a GSU that constantly works on protecting this information from being accessed by unauthorized users, both inside and outside the Company, utilizing well-guarded passwords that are only distributed to a limited number of employees at Fareportal who need access to such information in order to perform their assigned tasks, requiring all of its employees to sign confidentiality provisions, and requiring vendors and third parties to sign non-disclosure agreements before commencing negotiations.

180. During his employment with Fareportal, Kumar had access to Fareportal's trade secrets and confidential and proprietary information, and owed, and continues to owe, a duty to Fareportal not to divulge such information.

181. In the weeks leading up to his resignation from employment with Fareportal, Kumar directly misappropriated Fareportal's trade secrets and confidential and proprietary information by removing and taking the hard drive from his Fareportal issued laptop without authorization.

182. Kumar has also forwarded himself other emails containing, Fareportal software changes and enhancements to be made at Fareportal.

183. Furthermore, Kumar has accepted employment with Travana which, as an OTA, is a direct competitor of Fareportal and sells and proposes to sell the same products and services to the same customers. In light of this, Fareportal's trade secrets and confidential and proprietary information would be highly valuable to Travana, and Travana has employed Kumar so that he will disclose Fareportal's trade secrets and confidential and proprietary information to Travana.

184. Through these actions, Travana will have gained knowledge of Fareportal's trade secrets and confidential and proprietary information by improper means.

185. Upon information and belief, Kumar's new job responsibilities and functions at Travana are substantially the same as those he performed for Fareportal such that he will not be able to fulfill his new responsibilities without disclosing or using Fareportal's trade secrets and confidential and proprietary information.

186. Such inevitable disclosure to Travana violates Kumar's duty to refrain from divulging Fareportal's trade secrets and confidential and proprietary information, and will

directly and proximately cause Fareportal to suffer great and irreparable damage and injury, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Fareportal and that Fareportal will continue to suffer by the continued acts of Travana and Kumar.

COUNT VII

CONVERSION (Against Kumar)

187. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 186 above as if fully set forth herein.

188. Fareportal issued to Kumar a Lenovo laptop for him to utilize in the performance of his job duties at Fareportal.

189. Upon his resignation from Fareportal, Kumar returned the Lenovo laptop to Fareportal, however, the original hard drive contained in the Lenovo laptop had been removed and replaced with another hard drive.

190. Fareportal has demanded that Kumar return the Lenovo hard drive to Fareportal, but Kumar has refused.

191. Fareportal, as the owner of the hard drive, has a superior right of possession to the hard drive.

192. By failing to return the hard drive to Fareportal, Kumar has improperly exercised dominion over the hard drive without Fareportal's authorization, which is in defiance of Fareportal's rights.

193. The failure of Kumar to return the hard drive was done with the malicious intent to deprive Fareportal of its property.

194. As a result of the conversion by Kumar of the hard drive, Kumar has damaged Fareportal in an amount to be determined at trial.

COUNT VIII

UNFAIR COMPETITION (Against Travana and Kumar)

195. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 194 above as if fully set forth herein.

196. During his employment with Fareportal, Kumar had access to Fareportal's trade secrets and confidential and proprietary information.

197. In the weeks leading up to his resignation from employment with Fareportal, Kumar directly misappropriated Fareportal's trade secrets and confidential and proprietary information by removing and taking the hard drive from his Fareportal issued laptop without authorization.

198. Kumar has also forwarded himself other emails containing, Fareportal software changes and enhancements to be made at Fareportal.

199. Upon information and belief, Kumar and Travana took Fareportal's trade secrets and confidential and proprietary information to gain a competitive advantage over Fareportal.

200. Upon information and belief, Kumar and Travana have utilized the trade secrets and confidential and proprietary information of Fareportal to develop Travana's OTA, and unfairly compete against Fareportal.

201. Travana's and Kumar's acts of unfair competition will directly and proximately cause substantial damage to Fareportal and its business, including the loss of market share and prospective customers, loss of its trade secrets and confidential and proprietary information, and damage to its reputation.

202. Travana's and Kumar's acts of unfair competition will directly and proximately cause Fareportal to suffer great and irreparable damage and injury, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Fareportal and that Fareportal will continue to suffer by the continued acts of Travana and Kumar.

COUNT IX

AIDING AND ABETTING BREACH OF FIDUCIARY DUTY (Against Travana and Seyalioglu)

203. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 202 above as if fully set forth herein.

204. Travana and Seyalioglu aided and abetted Kumar's breach of fiduciary duty by contributing to and encouraging his tortious activity, including but not limited to Kumar's direct misappropriation of Fareportal's trade secrets and confidential and proprietary information, and inducing him to commence working for Travana.

205. Travana's and Seyalioglu's aiding and abetting Kumar's breach of fiduciary duty was intentional and without justification.

206. Travana's and Seyalioglu's participation in the breach of Kumar's fiduciary duties will directly and proximately cause substantial damage to Fareportal and its business, including damage to its reputation.

207. Travana's and Seyalioglu's participation in the breach of Kumar's fiduciary duties will directly and proximately cause Fareportal to suffer great and irreparable damage and injury, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Fareportal and that Fareportal will continue to suffer by the continued acts of Travana and Seyalioglu.

COUNT X

**TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE
(Against Travana, Seyalioglu and Kumar)**

208. Fareportal incorporates by reference and realleges the allegations contained in paragraphs 1 through 207 above as if fully set forth herein.

209. Fareportal had a reasonable expectation of entering into a valid business relationship with clients worldwide by implementing the strategies and plans it developed at its own great cost and expense.

210. Travana, through former Fareportal employee Seyalioglu, induced Kumar to join Travana, so Kumar could provide Travana with Fareportal's trade secrets and confidential and proprietary information and lure away Fareportal's clients.

211. The provision of Fareportal's valuable trade secrets and confidential and proprietary information to Travana is detrimental to Fareportal's business because it allows a direct competitor to improperly benefit from the time and expense invested by Fareportal in the creation of such trade secrets and confidential and proprietary information to create client relationships and expand its market share.

212. Upon information and belief, Kumar, also with full knowledge of Fareportal's employment agreements with its employees, is currently in the process of trying to recruit Fareportal employees to work for Travana in order to obtain more of Fareportal's trade secrets and confidential and proprietary information.

213. The provision of Fareportal's trade secrets and confidential and proprietary information to Travana is detrimental to Fareportal and hurts Fareportal's competitive edge and its valuable client population in the OTA marketplace.

214. Travana's, Seyalioglu's and Kumar's acts of tortious interference with Fareportal's prospective economic relations will directly and proximately cause substantial damage to Fareportal and its business, including the loss of market share and prospective customers, loss of its trade secrets and confidential and proprietary information, and damage to its reputation.

215. Travana's, Seyalioglu's and Kumar's acts of tortious interference with Fareportal's prospective economic relations will directly and proximately cause Fareportal to suffer great and irreparable damage and injury, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Fareportal and that Fareportal will continue to suffer by the continued acts of Travana, Seyalioglu and Kumar.

WHEREFORE, Fareportal demands judgment against Defendants as follows:

(1) For a permanent injunction enjoining Defendants and their agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all other persons acting in concert with them:

(a) from all further infringing or unlawful conduct in connection with Travana's ongoing business, including, but not limited to, its continued operation of Janbala and any other use of FP4;

(b) from all further infringement of FP4; and

(c) requiring removal of FP4 from all places where it has been stored electronically or otherwise, and destruction of any and all copies of FP4;

(2) For an award of Fareportal's actual damages and lost profits it has sustained as a result of Defendant's unlawful acts of copyright infringement and to recover from Defendants'

the gains, profits, and advantages Defendants have obtained as a result of the wrongful conduct alleged herein, in an amount to be determined at trial, or, at Fareportal's election, an award of statutory damages, pursuant to 17 U.S.C. § 504;

(3) For an order awarding Fareportal its attorneys' fees pursuant to 17 U.S.C. § 505;

(4) For an order awarding Fareportal its attorneys' fees under the Defend Trade Secrets Act;

(5) For an order awarding Fareportal exemplary damages in an amount twice the amount of actual damages awarded, for willful and malicious misappropriation under the Defend Trade Secrets Act;

(6) For an order requiring 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, Seyalioglu, Kumar and Ware's personal computers, Travana's computer network and systems, and any computers used by Ware, Seyalioglu or Kumar in the course of their employment with Travana;

(7) For an order that Defendants provide the accounting pleaded for above;

(8) For an award of compensatory damages against Defendants in favor of Fareportal;

(9) For an award of punitive damages against Defendants and in favor of Fareportal;

(10) For an order that Fareportal recover its costs from Defendants;

(11) For prejudgment and postjudgment interest according to law; and

(12) For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Fareportal demands
a trial by jury of all issues so triable.

Dated: New York, New York
December 22, 2016

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