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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)

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

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Fareportal Inc. (“Fareportal”), by and through its undersigned counsel, Sheppard Mullin Richter & Hampton, LLP files this motion (the “Motion”) seeking an order, substantially in the form attached as Exhibit A (the “Proposed Order”), authorizing Fareportal to conduct an examination of Travana, Inc. (“Travana”), pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (“Rule 2004”), and requests that this Court enter the Proposed Order directing Travana to appear through its designated representatives for examination and to produce documents related to the software and source code that Airfasttickets, Inc. (“Airfasttickets” or the “Debtor”) sold to Travana’s predecessor pursuant to an October 23, 2015 Purchase and Sale Agreement between Airfasttickets and AirTourist, Inc. (the “Sale Agreement”). In support of this Motion, Fareportal submits the *Declaration of Werner G. Kunz-Cho in Support of the Motion for Order Authorizing Fareportal Inc. to (A) Conduct a 2004 Examination of Travana, Inc. and (B) Seek Related Document Production* (the “Kunz-Cho Declaration”), which is attached as Exhibit B. In further support of this Motion, Fareportal respectfully states as follows:

Preliminary Statement

Fareportal is a leader in the highly competitive online air travel industry and, as such, has been the target of misappropriation of its Trade Secrets (defined below) and improper solicitation of its employees by competitors. Specifically, prior to the bankruptcy filing, Fareportal litigated against Airfasttickets based upon the misappropriation of Fareportal’s Trade Secrets and unlawful solicitation of Fareportal’s employees. In 2016, Fareportal found itself in almost identical litigation against Travana, formerly known as AirTourist, Inc. (“AirTourist”) and which was formed for the purpose of purchasing substantially all of Airfasttickets’ assets out of this bankruptcy case, on very similar facts and allegations. On April 19, 2017, certain alleged

creditors of Travana filed an involuntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Northern District of California. Travana's bankruptcy remains pending, and the evidence demonstrating Travana and Airfasttickets' misappropriation and solicitation in both the previous litigation against the Debtor and the claims against Travana is significant.

To that end, there is a disturbing continuity of identity between some of the key officers and individuals who were and are responsible for the misappropriations of Fareportal's Trade Secrets and illegal solicitation of Fareportal's employees, first at Airfasttickets and then with Travana. Specifically, and among others, Ahmet Seyalioglu (a/k/a Sevket Seyalioglu) ("Seyalioglu"), the former Vice President of Technology at Fareportal, served as Head of IT and Chief Technology Officer at Airfasttickets, and subsequently served as Chief Technology Officer of Travana. In addition, Jason Chen ("Chen"), a Petitioning Creditor, was a former member of the Airfasttickets' board of directors and former co-Chief Executive Officer, and was, until Travana shut its doors, President and CEO of Travana.

As a result, it is neither surprising, nor a coincidence, that even before the order for relief was entered against Airfasttickets, Chen, Seyalioglu and other Airfasttickets employees and insiders had left that debtor to create Travana (under its previous name of AirTourist), in order to purchase the business and substantially all of the assets of Airfasttickets. Ultimately, Airfasttickets sold substantially all of its assets to Travana, including, without limitation, intellectual property and source code, through a private sale, subject to no competitive bidding and without any notice to Fareportal. On information and belief, Travana built its business around this intellectual property and source code.

Upon discovering that Airfasttickets sold substantially all of its assets to Travana, including, without limitation, intellectual property and source code, without any notice to Fareportal, Fareportal filed a September 30, 2016 Proof of Claim against the Debtor (the “Fareportal Claim”) in an unliquidated amount of no less than \$10,000,000.00 arising from, among other things, the Debtor’s misappropriation and sale of Fareportal’s trade secrets to Travana. Accordingly, Fareportal now seeks authority to conduct a Rule 2004 examination of Travana, including the production of documents, in order to determine whether the Debtor continued to misappropriate Fareportal’s Trade Secrets in breach of the Settlement Agreement (defined below) and, specifically, whether the Debtor sold any such misappropriated Trade Secrets to Travana, who after actively misappropriating Fareportal’s Trade Secrets and soliciting its employees as the Debtor did before it, was placed into bankruptcy in California.

Fareportal believes it has ample basis to seek discovery against Travana regarding certain of the assets transferred by the Debtor to Travana – namely the identity of the transferred source code and related assets on which the sale was based. Consistent with the Court’s statements at the November 27, 2018 status conference that a 2004 Motion could aid in defining the liability of the estate, under Fareportal’s proof of claim, once and for all, Fareportal seeks this relief in order to determine the extent of its claims against the Debtor’s estate as described in the Fareportal Claim and, thus, to enable the Fareportal Claim to be liquidated, as well as to protect Fareportal’s rights and Trade Secrets and ensure that the Debtor’s estate does not inequitably distribute proceeds from the sale of assets that the Debtor may never have been entitled to possess, no less transfer. Fareportal has a clearly identifiable interest in discovering the nature of the assets transferred and the extent of its claims as a result thereof. Fareportal respectfully submits that *all* interested parties have similar interest in determining the assets and liabilities of the Debtor in

order to facilitate distributions to all Airfasttickets' creditors. Accordingly, Fareportal respectfully requests that the Court grant this Motion.

Jurisdiction

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

2. The predicate for the relief requested in this Motion is Rule 2004.

Background

I. The Pre-Petition Litigation Between Fareportal and Airfasttickets

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

4. 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 airfares. *Id.* at ¶ 6.

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

6. Fareportal has spent substantial resources developing trade secrets and confidential and proprietary information (collectively, the “Trade Secrets”) in order to maintain a competitive advantage within the industry. The Trade Secrets owned by Fareportal include, but are not limited to the following: (i) source code; (ii) business plans and models; (iii) customer profile databases; (iv) customer contact information; (v) pricing plans, marketing strategies and future plans with respect to customers; (vi) contracts with Customer Relationship Management software suppliers and other vendors; (vii) repeat booking statistics; (viii) numerous analytics reports; (ix) passenger detail schematics; (x) customer booking details; and (xi) website traffic source information. None of Fareportal’s Trade Secrets are publicly available, and Fareportal has taken significant steps to protect the same. *Id.* at ¶ 8.

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

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

9. On or about April 19, 2013, Fareportal and the Defendants entered into a certain *Settlement Agreement & Release* (the “Settlement Agreement”) that settled the 2013 Complaint.¹

II. Airfasttickets’ Bankruptcy Proceedings

A. General Background

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

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

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

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

B. Sale Process

14. On October 26, 2015, Airfasttickets filed the *Debtor’s Motion (i) for Authorization to (A) Sell Substantially All of Its Property Free and Clear of All Liens, Claims,*

¹ The Settlement Agreement is considered confidential and has been provided to the Court, and to counsel to Airfasttickets (now counsel to the Liquidating Trust) in connection with the Airfasttickets 2004 Motion (defined below) filed in this case in August 2016, under seal, pursuant to the August 30, 2016 Order issued by this Court [Dk. No. 205] (the “Sealing Order”). The Sealing Order states, in part, that “[t]he unredacted 2004 Motion and the Kunz Declaration shall be made available by Fareportal, on a confidential basis, only to the Court, the United States Trustee, and counsel to Airfasttickets. The unredacted 2004 Motion and the Kunz Declaration shall not be made available to the general public.” And further that “[t]his Order is without prejudice to the rights of any party in interest to seek to make public any portion of the pleadings and/or documents filed under seal pursuant to this Order.” Sealing Order at ¶¶ 3-4. A copy of the Settlement Agreement may be provided upon request and upon agreement to hold the same confidential.

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.

15. As set forth in the Sale Motion, Airfasttickets sought approval of the sale of substantially all of its intellectual property and software and certain related assets (the “Property”) to AirTourist pursuant to a certain *Purchase and Sale Agreement* (the “Sale Agreement”). The Property included “[a]ll source code and rights to source code-past, present and future-that is compiled and installed on machines that run the Airfasttickets Website, including all Amazon infrastructure and hosted data contained in or associated with it, and all configuration data necessary in order for the systems to operate properly.” Sale Agreement, Exhibit A, at ¶ 1. A full description of the Property was attached as Exhibit A to the Sale Agreement.

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

17. On November 1, 2015, Panos Kordonouris & Associates E.E. a/k/a New Media Concept Limited Partnership (“New Media”) and Goodwin Solutions GmbH (“Goodwin”) filed an objection (the “Objection”) to the Sale Motion. Dk. No. 65. As set forth in the Objection,

New Media and Goodwin objected to the sale of an on-line booking and payment system that New Media and Goodwin licensed to Airfasttickets. Objection at ¶¶ 4–7.

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

19. Fareportal never received any notices in connection with the Debtor’s bankruptcy case, including notice of the bankruptcy case, or any information, solicitations for interest in or other notices in connection with the Sale Motion or the Sale Order. In fact, Fareportal did not become aware of the Debtor’s bankruptcy case until after the Sale Order was entered and only learned of the existence of the bankruptcy case on August 1, 2016 through a third-party and in connection with the commencement of the Trade Secrets Action (defined below). Kunz-Cho Decl. at ¶ 15.

III. Fareportal’s Trade Secrets Action Against Travana

20. On August 1, 2016, Fareportal commenced a civil action (the “Trade Secrets Action”) against Jason Ware (“Ware”), a former Fareportal employee who was unlawfully solicited and then engaged by Travana, and Travana in the Supreme Court of New York, New York County, Index No. 653995/2016, alleging, *inter alia*, that Travana misappropriated Fareportal’s trade secrets and confidential and proprietary information by improperly soliciting and hiring Ware, in order to obtain Fareportal’s trade secrets.

21. Also, on August 1, 2016, Fareportal filed a motion for a temporary restraining order, a preliminary injunction, and expedited discovery (the “TRO Motion”) related to the allegations in the 2016 Complaint.

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

23. Ware was not the first former Fareportal employee that Travana poached. Travana employed at least four other former Fareportal employees – most notably, Andre Azer (“Azer”) and Seyalioglu, both of whom executed employment agreements similar to Ware’s employment, and one of whom was previously employed by the Airfasttickets.

24. It was only through the Trade Secrets Action that Fareportal learned of these bankruptcy proceedings and sale of the Airfasttickets’ assets to Travana. Kunz-Cho Decl. at ¶ 15.

IV. Fareportal’s Proof of Claim

25. By the time Fareportal learned of these bankruptcy proceedings, Airfasttickets had received an order, dated August 12, 2016, approving its *Motion of the Debtor for an Order (i) Approving its Disclosure Statement, (ii) Establishing Plan Solicitation and Voting Procedures, (iii) Scheduling a Confirmation Hearing, and (iv) Establishing Notice and Objection Procedures for Confirmation of the Debtor’s Chapter 11 Plan of Liquidation* which sought among other forms of relief, approval of a disclosure statement (the “Disclosure Statement”) and a chapter 11 plan of liquidation (the “Plan”). Dk. Nos. 159 and 184.

26. Among other things, the Disclosure Statement, as amended, provided that distributions and other payments on claims to be made under the Plan would be based, in part, on the proceeds from the sale of substantially all of Airfasttickets’ assets to Travana. See Disclosure Statement at Art. V.A.

27. After learning of Airfasttickets' bankruptcy proceedings and the entry of the Sale Order in early August 2016, Fareportal filed a motion seeking authority to conduct an examination of Airfasttickets and seeking the production of certain documentation related to and identifying, with specificity, the Property sold to Travana under the Sale Order (the "Airfasttickets 2004 Motion"). The specific aim of the Airfasttickets Rule 2004 Motion was to uncover whether the Property sold by Airfasttickets to Travana was misappropriated from and/or is infringing on Fareportal's Trade Secrets.

28. On September 14, 2016, the Court held a hearing on the Rule 2004 Motion (the "September 14 Hearing"). At the September 14 Hearing, the Court stated it believed, based on representations from Airfasttickets' counsel, that Travana would be better positioned to provide information relating to the Property sold as part of the Sale Order. *See* Dk. No. 231, September 14 Hearing Tr. 26:25 to 27:21.

The Court specifically stated at the September 14 Hearing that: People can ask for information from the debtor so they can find out where they stand vis-a-vis the debtor So I don't know that that ends the inquiry. I guess part of me likes to approach these things very I guess part of me likes to approach these things very practically. I don't know if the debtor has access in any easy way to the source code, such that it be compared and spend less time on this issue than we might spend on attorneys' fees. I don't know how easy or difficult it is to do that.

Id. 26:20-25 through 27:1-4.

. . .

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

Id. 45:2-10.

29. On September 23, 2016, the Court entered the order denying the Rule 2004 Motion “for the reasons stated on the record” at the September 14 Hearing. Dk. No. 229.

30. On October 3, 2016, Fareportal filed the Fareportal Claim in the amount of not less than \$10 million which was assigned Claim No. 86 arising from, among other things, the sale of Fareportal’s trade secrets, including without limitation, source code, to Travana. 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.”

31. On October 13, 2016, the Court held a hearing on confirmation of the *Debtor’s Second Amended Chapter 11 Plan of Liquidation* (the “Plan”). On 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.

32. The Confirmation Order includes the following language:

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 [Airfasttickets].

Confirmation Order, ¶ J.

33. On December 2, 2016, the Airfasttickets’ Plan became effective.

34. On January 13, 2017, the liquidating trustee for the Airfasttickets estate, and pursuant to the Plan, filed its *First Motion for Omnibus Objection to Claim(s)* including an objection to Fareportal’s claim against Airfasttickets on the grounds of (a) books and records, and (b) inadequate documentation (the “Claim Objection”). Dk. No. 280.

35. On February 15, 2017, the Court held a hearing on the Claim Objection and Fareportal’s Response thereto, filed on February 8, 2017.

36. On April 11, 2017, the Court entered the *Order Concerning First Omnibus Objection of the Liquidating Trust of Airfasttickets, Inc. to Proof of Claim No. 86 Filed by Fareportal, Inc.*, which did not grant nor deny the Claim Objection, but instead provided for periodic status conferences on the matter and, specifically, to update the Court on the status of discovery in the Trade Secrets Action and other pending proceedings with respect to Travana stating, in part, that:

[T]he Parties reserve all of their respective rights, including without limitation, (A) the Liquidating Trust's right to amend, modify, or supplement the Objection and to assert further or other arguments that the Claim should be (i) disallowed (a) on the basis that it was filed after the Claims Bar Date, (b) pursuant to section 502(e)(1) of the Bankruptcy Code, or (c) on any other or further substantive or procedural grounds permitted under bankruptcy and non-bankruptcy law, or (ii) estimated under section 502(c) of the Bankruptcy Code, and (B) Fareportal's rights to oppose any such objections or arguments to disallow or estimate the Claim, file a motion to authorize a late-filed proof of claim, or seek any other or further relief related to the Claim

Dk. No. 301.

37. In connection with Travana's bankruptcy proceedings, Fareportal sought and obtained a July 26, 2017 Order to conduct the examination of and obtain discovery from certain Travana employees, including Chen and Seyalioglu (collectively, the "Travana Employees"), pursuant to Rule 2004. N.D. Cal. Bankr. Case No. 17-30373, Dk. No. 34, 62. While Fareportal obtained discovery from the Travana Employees in connection with its application in the Travana bankruptcy, and conducted examinations of the Travana Employees pursuant to Rule 2004 in November 2017 and January 2018, Fareportal did not obtain discovery from Travana itself.

38. After Fareportal completed its examinations of the Travana Employees, Fareportal engaged in lengthy discussions with the Chapter 7 Trustee for Travana regarding a potential acquisition of the source code, software and documents maintained by Travana, including, but not limited to the source code and software that Travana acquired from

Airfasttickets pursuant to the Sale Order. Ultimately, Fareportal and the Chapter 7 Trustee for Travana did not reach such an agreement.

39. On November 27, 2018, the Court held a status conference with respect to the Claim Objection filed by Airfasttickets. During that status conference, counsel for Fareportal and the Debtor advised the Court of Fareportal's efforts to obtain documents from the Travana estate with respect to the software and source code that Travana acquired from Airfasttickets pursuant to the Sale Order, and that the parties had reached an impasse with, and vis a vis, the Travana estate. In connection with those discussions, the Court addressed the potential for Fareportal or the Debtor to seek discovery from Travana pursuant to Rule 2004 with respect to the software and source code that the Debtor sold to Travana pursuant to the Sale Order. Dk. No. 362. Specifically, the Court stated:

But certainly, if there was a request for a 2004 about liability of the estate, based on the proof of claim, I can't see how that wouldn't be granted. And then somebody would have to explain that they can't produce the stuff. And then at least you have a factual backdrop to say, we need this for the estate.

November 27, 2018 Hearing Tr. 13:2-7. A copy of the November 27, 2018 Hearing Transcript is attached to this Motion as Exhibit C.

40. Accordingly, by this Motion, Fareportal is seeking an order authorizing it to conduct an examination of Travana pursuant to Rule 2004 in order to establish and liquidate the liabilities of the Airfasttickets estate on the Fareportal Claim.

Relief Requested

41. By this Motion, Fareportal respectfully requests entry of the Proposed Order under Rule 2004 permitting Fareportal to conduct an examination of Travana and to seek related document production in connection with the misappropriation of Fareportal's Trade Secrets in

order to determine the liabilities of the Debtor's estate under the Fareportal Claim. Fareportal believes that the discovery that it seeks is very narrowly tailored and is not, in any way, burdensome nor harassing. Specifically, Fareportal is seeking information with respect to, among other things, the identity of the Transferred Source Code (as defined in Exhibit D attached hereto) which forms the crux of the Debtor's sale of its assets to Travana (and around which Travana sought to build its business), in order to begin the process for liquidation of the Fareportal Claim. The Fareportal's Rule 2004 document requests are attached to this Motion as Exhibit D.

Basis for Relief

42. Rule 2004(a) provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” Rule 2004(b) provides further that the scope of such examination may relate to “the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.” In addition, Rule 2004(c) provides that “the attendance of an entity for examination and for the production of documents . . . may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial.”

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

44. Discovery under Rule 2004 can be used as a “pre-litigation discovery device.” *In re Wilson*, 413 B.R. 330, 336 (Bankr. E.D. La. 2009). “No contested matter or adversary

proceeding need be instituted as a prerequisite to conducting an examination under this rule.” *In re Almatiss*, 2010 WL 4877868, at *3. Consequently, a Rule 2004 motion need not be tied to specific factual allegations at issue between parties. *In re Symington*, 209 B.R. 678, 684 (Bankr. D. Md. 1997).

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

46. In addition, Fareportal has a clearly identifiable interest in ensuring that the Settlement Agreement has not been breached in the course of these bankruptcy proceedings.

47. Specifically, Fareportal obtained the 2013 TRO against the Airfasttickets and others enjoining them from using, referencing, or relying on Fareportal’s Trade Secrets. Chen served as a member of the board of directors and as the Co-CEO of Airfasttickets. Chen ultimately resigned from the Debtor and was involved in forming Travana to purchase the Debtor’s business and assets during the bankruptcy case. Travana, under the leadership of Chen, employed both Seyalioglu and Ware, and other former Fareportal employees, and continued to aggressively solicit Fareportal’s other employees in order to exploit Fareportal’s Trade Secrets to

the significant detriment of Fareportal, and knowingly damage Fareportal's business. Accordingly, Chen as an officer and director of the Debtor, and subsequently as a founder and CEO/President of Travana, played prominently in the history between Fareportal, on the one hand, and the Debtor and Travana, on the other. This continuity of leadership and pattern of repetitive and systematic misappropriation (and solicitation) provides a strong basis for Fareportal's concern that the Debtor may have breached the Settlement Agreement and transferred misappropriated Trade Secrets to Travana, as set forth in the Fareportal Claim.

48. Permitting Fareportal to conduct an examination of Travana and to seek related document production in connection with the misappropriation of Fareportal's Trade Secrets will assist Fareportal, the Debtor and this Court in determining Fareportal's Claim against the Debtor's estate. In fact, it may be the only way to bring closure to the instant matter and allow the Debtor's case to make equitable distributions and ultimately close their case. Moreover, Fareportal believes that all parties in interest in this bankruptcy case have an interest in determining the liabilities of the Debtor's estate, and ensuring that the Debtor and Travana, who have a commonality of former and current officers and management, did not abuse the bankruptcy process to the significant detriment of its creditors.

No Prior Request

49. No prior request for the relief sought in this Motion has been made to this or any other court. As set forth above, in connection with Travana's bankruptcy proceedings, Fareportal sought and obtained discovery pursuant to Rule 2004 from the Travana Employees, but Fareportal has not sought discovery pursuant to Rule 2004 from Travana as it does in connection with this Motion.

Notice

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

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

Dated: February 13, 2019
New York, New York

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