

Hearing Date: March 3, 2020 at 11:00 a.m. (prevailing Eastern Time)  
Objection Deadline: February 25, 2020 at 4:00 p.m. (prevailing Eastern Time)

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*Counsel for the Liquidating Trust of  
Airfasttickets, Inc.*

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

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In re:	:	Chapter 11
AIRFASTTICKETS, INC.,	:	Case No. 15-11951 (SHL)
	:	
Debtor.	:	
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**NOTICE OF MOTION OF THE LIQUIDATING TRUST OF  
AIRFASTTICKETS, INC. UNDER SECTION 105(A) FOR AN  
ORDER ESTABLISHING PROCEDURES FOR THE EXCHANGE OF  
INFORMATION AND REVIEW OF INTELLECTUAL PROPERTY, SOFTWARE  
AND RELATED ASSETS OF TRAVANA, INC. AND FAREPORTAL, INC. ON  
A CONFIDENTIAL BASIS, IN CONNECTION WITH CONTESTED MATTER**

PLEASE TAKE NOTICE that on February 18, 2020, the Liquidating Trust of Airfasttickets, Inc. (the “AFT Trust”), through Adam Meislik, the duly appointed trustee of the Liquidating Trust (the “AFT Trustee”), by its undersigned counsel, hereby filed the annexed *Motion of the Liquidating Trust of Airfasttickets, Inc. Under Section 105(a) for an Order Establishing Procedures for the Exchange of Information and Review of Intellectual Property, Software and Related Assets of Travana, Inc. and Fareportal, Inc. on a Confidential Basis, in Connection with Contested Matter* (the “Motion”). A hearing on the Motion will be held before the Honorable Sean H. Lane, United States Bankruptcy Court for the Southern District of New York (the “Court”), in Courtroom 701, One Bowling Green, New York, New York 10004-1408, on **March 3, 2020 at 11:00 a.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that the Hearing may be continued or adjourned thereafter from time to time without further notice other than an announcement of the adjourned date or dates in open court at the Hearing.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion and proposed order must be in writing, must conform to the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Local Bankruptcy Rules for the Southern District of New York, must set forth the name of the objecting party, must state with particularity the basis for the objection and the specific grounds therefor, and must be filed with the Clerk of the Court (with a courtesy copy delivered to Judge Lane’s Chambers) and served upon (a) the attorney for the Liquidating Trust of Airfasttickets, Inc., Arent Fox LLP, 1301 Avenue of the Americas, Floor 42, New York, New York 10019 (Attn: Nicholas A. Marten, Esq.) and (b) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, New York 10014; so as to be filed and actually received in the Bankruptcy Judge’s Chambers no later than **February 25, 2020 at 4:00 p.m. (prevailing Eastern Time)**. Unless objections are received by that time, the order may be signed.

Dated: New York, New York  
February 18, 2020

Respectfully submitted,

**ARENT FOX LLP**

By: /s/ Aram Ordubegian

Aram Ordubegian (admitted *pro hac vice*)

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*Counsel for the Liquidating Trust of  
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	:	Chapter 11
AIRFASTTICKETS, INC.,	:	
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**MOTION OF THE LIQUIDATING TRUST OF AIRFASTTICKETS, INC. UNDER SECTION 105(A) FOR AN ORDER ESTABLISHING PROCEDURES FOR THE EXCHANGE OF INFORMATION AND REVIEW OF INTELLECTUAL PROPERTY, SOFTWARE AND RELATED ASSETS OF TRAVANA, INC. AND FAREPORTAL, INC. ON A CONFIDENTIAL BASIS, IN CONNECTION WITH CONTESTED MATTER**

The Liquidating Trust of Airfasttickets, Inc. (the “AFT Trust”), through Adam Meislik, the duly appointed trustee of the Liquidating Trust (the “AFT Trustee”), by its undersigned counsel, hereby files this motion (the “Motion”) for an order in the form of the proposed order annexed hereto as **Exhibit A** (the “Proposed Order”) pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) establishing certain procedures (attached to the Proposed Order as **Exhibit 1**) for the exchange of information and review of intellectual property, software and related assets of Travana, Inc. (“Travana”) and Fareportal, Inc. (“Fareportal”) on a confidential basis, in connection with a pending contested matter between the AFT Trust and Fareportal. The AFT Trust respectfully states as follows:

### **JURISDICTION AND VENUE**

1. The United States Bankruptcy Court of the Southern District of New York (this “Court”) has subject matter jurisdiction to consider the Motion under 28 U.S.C. §§ 157(a) and 1334(b). Further, under Article XI of the *Debtor's Chapter 11 Plan of Liquidation* [Docket No. 157], as amended [Docket No. 238] (the “AFT Plan”), the Court has jurisdiction over any matter arising under the Bankruptcy Code, arising in or related to this Chapter 11 Case, or the AFT Plan, including motions, contested matters, objections or estimations of claims.

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein is section 105(a) of the Bankruptcy Code; Rules 7016 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and Rule 9014-1 of the Local Rules for the Court (the “Local Rules”).

### **RELIEF REQUESTED**

4. By this Motion, the AFT Trust seeks entry of an order, substantially as in the form of the Proposed Order, under section 105(a) of the Bankruptcy Code approving the procedures attached as **Exhibit 1** to the Proposed Order (the “Procedures”) governing the exchange of information and review of intellectual property, software and related assets of Travana and Fareportal on a confidential basis, in connection with a pending contested matter between the AFT Trust and Fareportal. The AFT Trust respectfully submits that the Procedures are beneficial to the estate (the “AFT Estate”) and serves as a vehicle to efficiently and economically advance adjudication of the Fareportal Claim (defined below) so as to expedite distributions to creditors.

### **FACTUAL BACKGROUND**

5. On July 27, 2015, this bankruptcy case was commenced (the “Case”) upon the filing of an involuntary petition against Airfasttickets, Inc. (“AFT”) seeking an order for relief under chapter 7 of the Bankruptcy Code with the Court.

6. On September 21, 2015, AFT consented to entry of the relief order [Docket No. 8].

7. On October 27, 2015, the Court entered an order converting the case to one under chapter 11 of the Bankruptcy Code [Docket No. 28].

8. On November 24, 2015, the Court approved the sale of substantially all of AFT’s intellectual property, software and related assets to Travana [Docket No. 65] (the “Sale Order”).

9. On October 3, 2016, Fareportal filed a proof of claim (No. 86) (the “Fareportal Claim”) in this Case against the AFT Estate asserting a prepetition general unsecured claim in the “unliquidated amount of no less than \$10,000,000.00” based, in part, on Fareportal’s assertion that its trade secrets, including without limitation, its software source code (the “Fareportal Source Code”), was sold to Travana, Inc. (“Travana”) as part of the sale of substantially all of AFT’s intellectual property, software and related assets pursuant to the Sale Order.

10. On October 26, 2016, the Court entered its order [Docket No. 251] (the “Confirmation Order”) confirming the AFT Plan and approving the AFT Trust Agreement attached thereto, thereby establishing the AFT Trust and duly appointing Adam Meislik as the AFT Trustee. The AFT Plan became effective on December 2, 2016 (the “Effective Date”). *See* Docket No. 262.

11. On January 13, 2017, the AFT Trust filed its *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)* [Docket No. 280]

(the “Omnibus Objection”) which, among other things, objected to the Fareportal Claim on the basis that (i) it was filed without supporting documentation or damages computations for its assertions and (ii) there is no basis for a liability Fareportal in the AFT’s books and records.

12. On February 8, 2017, Fareportal responded to the Omnibus Objection [Docket No. 287] (the “Fareportal Response”) disputing the accuracy of the AFT’s books and records and asserting that the AFT Trust was on notice of the bases for the Fareportal Claim prior to its filing, due to Fareportal's prior filings in this Case.

13. On February 13, 2017, the AFT Trust filed a reply in further support of its Omnibus Objection [Docket No. 290] (the “Omnibus Reply”).

14. On April 11, 2017, the Court entered its Order [Docket No. 301] (the “Fareportal Order”) deeming the adjudication of the Fareportal Claim to be a contested matter (the “Contested Matter”) and preserved all of the parties rights, including without limitation, (i) the AFT Trust's right to amend, modify or supplement the Omnibus Objection as to the Fareportal Claim on any available substantive or procedural ground or to request estimation of the Fareportal Claim under section 502(c) of the Bankruptcy Code; and (ii) Fareportal’s right to oppose such objections or arguments and to seek authorization to file a late-filed proof of claim. The Fareportal Order also scheduled the first status conference concerning the Contested Matter for May 24, 2017. At the March 3, 2017 hearing on the Omnibus Objection, the Court explained that the Contested Matter was being placed on pause to permit Fareportal an opportunity to obtain evidence supporting its claims in the other forums. As of the date for the scheduled hearing to consider the relief sought in this Motion, it has been three-years, to the day, since the Court placed the Contested Matter on hold.

15. On April 19, 2017, certain of Travana’s creditors filed an involuntary petition against Travana seeking an order for relief under chapter 7 of the Bankruptcy Code in the Bankruptcy Court of the Northern District of California (the “Travana Court”) under Case No. 17-30373 (the “Travana Case”). Travana subsequently consented to entry of the order for relief in the Travana Case.

16. On May 25, 2017, Andrea A. Wirum was appointed as the Chapter 7 Trustee of the Travana estate (the “Travana Trustee”).

17. Thereafter, Fareportal conducted discovery in the Travana Case. Specifically, Fareportal received certain documentation and information through production requests and took depositions of various witnesses (collectively, the “Travana Discovery”).

18. On August 15, 2017, the Travana Court entered a *Protective Order* [Travana Docket No. 71] approving the *Stipulation to Entry of Protective Order Regarding Highly Sensitive Confidential Information, Source Code, and/or Trade Secrets* [Travana Docket No. 70] (collectively, the “Protective Order”). While Fareportal stated that certain information obtained in the Travana Discovery is probative to its claims asserted in the Fareportal Claim and the adjudication of the Contested Matter, Fareportal maintained that the Protective Order precluded it from sharing such information.

19. On February 13, 2019, Fareportal filed its *Motion to (A) Conduct a 2004 Examination of Travana, Inc. and (B) Seek Related Document Production* in this case [Docket No. 366] (the “2004 Motion”) in connection with the Fareportal Claim. Only HNA Group (International) Co., LTD. and HNA Capital Ltd. (collectively, “HNA”) filed a response to the 2004 Motion in the form of a limited objection [Docket No. 370] stating, in part, that HNA has no

objection to the 2004 Motion, but requests that any access to the Travana's assets and information not disturb, damage or alter such assets of HNA's access thereto.

20. On February 22, 2019, in response to the 2004 Motion, the Travana Trustee filed a motion to abandon [Travana Docket No. 171] (the "Motion to Abandon") the Travana estate's "rights, title, and interest in certain computer equipment, proprietary and non-proprietary intellectual property, and other data and records in her possession" (collectively, hereinafter defined as the "Travana Assets"). *See* Motion to Abandon, 1:18-19.

21. On February 28, 2019, the Court held a hearing on the 2004 Motion and granted the relief requested therein. HNA and Fareportal agreed to incorporate certain changes to the proposed order on the 2004 Motion to account for HNA's limited objection thereto. As a result of the Motion to Abandon and ongoing negotiations concerning the establishment of a custodianship for the Travana Assets, Fareportal delayed submission of the proposed order on the 2004 Motion.

22. On March 1, 2019, in connection with the Motion to Abandon, the Travana Trustee also filed a motion to vacate the Protective Order [Travana Docket No. 174].

23. In the interest of preserving the Travana Assets for purposes of discovery in the ongoing litigations, including the Fareportal Contested Matter, (i) Jason Chen, Edgar Park and AirTourist Holdings LLC (collectively, the "Chen Parties"); (ii) the AFT Trust; (iii) Fareportal; and (iv) HNA (collectively, the "Custodianship Parties") and the Travana Trustee agreed in principle to form a custodianship, with the AFT Trust as the custodian, to hold and maintain the Travana Assets. *See* Travana Docket Nos. 177, 178, 179, and 180.

24. On April 11, 2019, the Travana Court entered orders approving the Travana Trustee's abandonment of the Travana Assets to the AFT Trustee as custodian [Travana Docket No. 188] and vacating the protective order [Travana Docket No. 189] (collectively, the "Travana



Abandonment and Vacating Orders”). The Travana Abandonment and Vacating Orders became effective on June 10, 2019.

25. On May 31, 2019, the Custodianship Parties agreed to and entered the *Stipulation to Appoint the Liquidating Trust of Airfasttickets, Inc. as Custodian for Intellectual Property, Software and Related Assets of Travana, Inc.* (the “Custodian Stipulation”). Also on May 31, 2019, the AFT Trust filed a motion for entry of an order approving the Custodian Stipulation (the “Custodianship Motion”) [Docket No. 376]. The Custodian Stipulation is attached as Exhibit B to the Custodianship Motion.

26. On June 25, 2019, the Court entered its order approving the Custodian Stipulation [Docket No. 382] (the “Custodian Order”).

27. Notwithstanding entry of the order vacating the Travana Protective Order, entry of the Custodian Order and approval of the Custodian Stipulation, the sharing of information between Fareportal and the AFT Trust concerning the Travana Discovery, the Travana Assets and the Fareportal Source Code (collectively, the “Discovery and Intellectual Property”) has yet to proceed due to, among other reasons, concerns raised by the Chen Parties that the Travana Assets include certain privilege information.

28. At the status conference held on January 16, 2019, the Court directed the AFT Trust to file a motion pertaining to the sharing of information to place all parties in interest on notice that the sharing of certain information, including the Travana Assets and Travana Discovery, between Fareportal and the AFT Trust is to proceed and to give such parties in interest an opportunity to assert privilege or other objections.

**BASIS FOR RELIEF**

29. The AFT Trust seeks entry of the Procedures pursuant to section 105(a) of the Bankruptcy Code; Rules 7016 and 9014 of the Bankruptcy Rules; and Rule 9014-1 of the Local Rules.

30. Rule 7016<sup>1</sup> of the Bankruptcy Rules affords courts significant flexibility and discretion in adopting and implementing procedures, such as the proposed Procedures, in order to facilitate the “just, speedy, and inexpensive disposition of the action.” Fed. R. Civ. P. 16(c)(2)(P). Rule 7016 also provides that courts may enter orders controlling and scheduling discovery and modifying the disclosures required under Bankruptcy Rule 26.

31. In addition to Bankruptcy Rule 7016, section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to take such actions and implement such procedures as are necessary to enforce the provisions of the Bankruptcy Code. That provision provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

32. In light of this statutory and historical framework, the AFT Trust respectfully requests that the Court enter an order approving the following procedures concerning the sharing

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<sup>1</sup> Although Rule 7016 is not automatically applicable to contested matters, the Court has discretion, and should exercise such discretion, to apply Rule 7016 in the Contested Matter. Bankruptcy Rule 9014(c) makes certain Part VII Rules of the Bankruptcy Rules applicable in contested matters and provides that the Court “may at any stage in a particular matter direct that one or more of the other rules in Part VII to apply.” Fed. R. Bankr. P. 9014(c).

of the Travana Assets, Travana Discovery and Fareportal Source Code and related intellectual property pursuant to the following procedures:

**PROPOSED PROCEDURES FOR THE  
EXCHANGE OF INFORMATION AND REVIEW OF  
INTELLECTUAL PROPERTY, SOFTWARE AND RELATED  
ASSETS OF TRAVANA, INC. AND FAREPORTAL, INC., ON A  
CONFIDENTIAL BASIS, IN CONNECTION WITH CONTESTED MATTER**

- Incorporation of Recitals. The Factual Background set forth in the *Motion of the Liquidating Trust of Airfasttickets, Inc. Under Section 105(a) for an Order Establishing Procedures for the Exchange of Information and Review of Intellectual Property, Software and Related Assets of Travana, Inc. and Fareportal, Inc. on a Confidential Basis, in Connection with Contested Matter* (the “Motion”)<sup>2</sup> form an integral part of these Procedures, are true and correct statements of fact and are incorporated herein by this reference.
- Effectiveness of these Procedures. Upon their approval by the Court, these Procedures shall become effective and shall be binding on the Parties to the Custodian Stipulation, including, for the avoidance of doubt, the Chen Parties.
- Travana Assets and Travana Discovery Not Subject to Privilege in Favor of Chen Parties. Immediately upon approval of these Procedures by the Court, the Chen Parties are deemed to waive any and all privileges (including, but not limited to, the attorney-client or work-product privileges) with respect to the Travana Assets and Travana Discovery and, thus, the Chen Parties will be precluded from seeking entry of a protective order with respect to the Travana Assets or Travana Discovery on the basis of privilege.
- Subject to the Custodian Stipulation. These Procedures shall be subject to the terms of the Custodian Stipulation and, to the extent in violation thereof, shall be considered void as to that portion of these Procedures which is considered to be a violation thereof.
- Exchange of Information. The AFT Trustee and Fareportal shall exchange information in furtherance of the expeditious adjudication and/or negotiation of a compromise in connection with the Contested Matter, including without limitation:
  - a. Within thirty (30) days of the entry of an Order approving these Procedures, Fareportal shall provide to the AFT Trustee any nonprivileged information obtained by Fareportal in the course of the Travana Discovery that is relevant to the Fareportal Claim and to the adjudication of the Contested Matter.
  - b. Within thirty (30) days of entry of an Order approving these Procedures, Fareportal shall provide to the AFT Trustee a copy of the Fareportal Source Code and other intellectual property relevant to Fareportal’s assertions in the Fareportal Claim that AFT’s intellectual

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<sup>2</sup> To the extent not otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

property, software and related assets infringed on or otherwise was misappropriated from the Fareportal Source Code or Fareportal's other intellectual property, software and related assets.

- c. Within seven (7) days of entry of an Order approving these Procedures, the AFT Trustee shall provide to Fareportal an inventory of the Travana Assets and an estimate for the costs of duplicating and transferring to Fareportal copies of the Travana Assets (the "Duplication Estimate").
  - d. Within seven (7) days of the AFT Trustee providing Fareportal with the Duplication Estimate, Fareportal shall notify the AFT Trustee of the portion of the Travana Assets it wishes the AFT Trustee to duplicate and transfer to Fareportal. The AFT Trustee and Fareportal shall, in good faith, work together to make reasonable alternative arrangements for Fareportal's access to the Travana Assets that Fareportal declines to receive copies of. Fareportal shall bear the cost of duplicating and transferring the Travana Assets it selects.
  - e. Within thirty (30) days of receiving notice of the Travana Assets selected by Fareportal, pursuant to subparagraph (d) above, the AFT Trustee shall (i) duplicate and transfer to Fareportal copies of those Travana Assets selected by Fareportal; and (ii) shall make available those other Travana Assets not selected by Fareportal pursuant to the agreed alternative arrangements for Fareportal's reasonable access to the Travana Assets.
  - f. Upon the AFT Trustee's receipt of the Fareportal Source Code and/or Fareportal's other intellectual property pursuant to subparagraph (b) above, the AFT Trustee shall direct a qualified software analyst employed by Force10 Partners, LLC, to undertake a comparison of the pertinent Travana Assets, specifically the Travana Source Code, with the pertinent Fareportal intellectual property, specifically the Fareportal Source Code (the "AFT Code Comparison") in the most efficient and cost-effective way reasonably possible. If the AFT Trustee and Fareportal agree to Fareportal's reasonable participation in the AFT Code Comparison, the AFT Trust and Fareportal shall split the costs of the AFT Code Comparison. If the AFT Trustee and Fareportal do not agree to Fareportal's reasonable participation in the AFT Code Comparison, the AFT Trust shall bear the costs of the AFT Code Comparison.
- Integrity of Travana Assets and HNA's Access. The duplication and transfer of the Travana Assets, other agreed alternative arrangements for Fareportal's reasonable access to the Travana Assets or AFT Code Comparison conducted pursuant to these Procedures shall not impair HNA's current access to Travana Assets in any way, and shall be conducted in a manner in which the integrity of the Travana Assets, including without limitation, the accounts, data, source code, intellectual property and information, are not altered in any way.
  - Confidentiality. Any and all of the Travana Assets, Fareportal Source Code and/or other Fareportal intellectual property, together with any and all written or oral information exchanged between the AFT Trustee and Fareportal pursuant to these Procedures, shall be treated with the utmost confidentiality ("Confidential Information"). Neither the AFT Trustee, Fareportal nor their professionals shall disclose or permit access to Confidential Information to any third party without the prior written consent of the other party and, with respect to the

Travana Assets, the express written consent of HNA and/or the Chen Parties, as parties to the Custodian Stipulation. The foregoing shall not be applicable to any information that is publicly available when provided or which thereafter becomes publicly available other than through a breach of the Custodian Stipulation or these Procedures, or that is required or requested to be disclosed by judicial or administrative process, by applicable law or regulation or by any law enforcement authority. The obligations of the Parties under this Section shall survive the adjudication of the Fareportal Claim.

- Governing Law and Jurisdiction. The Procedures shall be construed and interpreted under and in accordance with laws of the State of New York, and where applicable, the United States Bankruptcy Code. The Court shall retain jurisdiction to hear and determine all matters arising from or related to these Procedures.

33. The AFT Trust believes that the proposed Procedures will provide for an efficient and cost effective means of resolving the Contested Matter as formal discovery, seeking broad categories of documents and information, will operate to delay and increase the cost involved in prosecuting and defending the Fareportal Claim and Contested Matter; whereas, the informal sharing of information relevant to the allegations asserted in the Fareportal Claim will enable Fareportal and the AFT Trust to resolve the Contested Matter before the parties are required to incur the substantial costs of formal discovery and litigation.

34. Indeed, the proposed Procedures will also push the information sharing necessary to resolve the Contested Matter forward. As of the date for the scheduled hearing to consider the relief sought in this Motion, it has been three-years, to the day, since the Court placed the Contested Matter on hold. Since entry of the Custodian Order on June 25, 2019, there has been no sharing of the Travana Assets or Travana Discovery. Although the Custodian Stipulation contemplated that a Custodianship Party, presumably the Chen Parties, would seek entry of a protective order concerning the Travana Assets on the basis of privilege, no party has sought entry of such order. The filing of this Motion and the proposed Procedures serves as a vehicle to place the Custodian Parties, including the Chen Parties, on notice that the information sharing provided contemplated by the Custodianship Agreement is to commence and, to the extent they wish to assert any privilege

(including, but not limited to, the attorney-client or work-product privileges) or to propose procedures for determining whether any privilege exists, they may do so now.

35. The proposed Procedures are consistent with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and are designed to further the goals of judicial economy and efficiency.

**NO PRIOR REQUEST**

36. No other prior motion for the relief sought herein has been made to this Court or any other court.

**NOTICE**

37. A copy of this Motion is being served upon (a) Fareportal; (b) HNA; (c) the Chen Parties; (d) the U.S. Trustee; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002.

38. The AFT Trust respectfully submits that no other or further notice of this Motion is required.

Dated: New York, New York  
February 18, 2020

Respectfully submitted,

**ARENT FOX LLP**

By: /s/ Aram Ordubegian

Aram Ordubegian (admitted *pro hac vice*)

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