

**Hearing Date: March 3, 2020 at 11:00 a.m. (prevailing Eastern Time)**

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

|                       |   |                         |
|-----------------------|---|-------------------------|
| -----X                |   |                         |
| In re:                | : |                         |
|                       | : | Chapter 11              |
| AIRFASTTICKETS, INC., | : |                         |
|                       | : | Case No. 15-11951 (SHL) |
| Debtor.               | : |                         |
|                       | : |                         |
| ----- X               |   |                         |

**STATEMENT IN SUPPORT 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**

Jason Chen, Edgar Park, and AirTourist Holdings LLC (collectively, the “Chen Parties”), by their undersigned counsel, hereby file this statement in support of the above-referenced motion (the “Motion”) by the Liquidating Trust of Airfasttickets, Inc. (the “AFT Trust”), and respectfully state as follows:

1. The Chen Parties support the entry of an order to allow and facilitate the exchange of information between the AFT Trustee and Fareportal to allow for the expedient resolution of the Contested Matter. Indeed, that was one of the objectives of the Custodian Stipulation and Custodian Order to which the Chen Parties agreed.

2. After the Custodian Stipulation was entered by this Court, Fareportal and the Chen Parties engaged in a few months of discussion and alternating responsibility for drafting the initial draft of a protective order, as agreed to and anticipated by the Custodian Stipulation. On November 14, 2019, the Chen Parties sent a draft protective order to Fareportal, which was never responded to. Force 10 was apprised of the status of the protective order and reminded of the need for a protective order to be entered prior to distribution of the Travana Assets. Force 10 represented to the Chen Parties that there was no immediate need for the protective order as none of the other parties to the Custodian Stipulation had asked for copies of the Travana Assets. *See Declaration of Derrick Talerico.*

3. The Revised Order, submitted by the AFT Trustee, raises two concerns for the Chen Parties, which the Chen Parties and Fareportal agreed to address prior to production of Travana Assets: (1) protection of attorney-client privilege; and (2) protection of proprietary and confidential Travana source code and other intellectual property.

4. The Travana Assets contain years' worth of Travana's books, records, files, and assets, including proprietary trade secrets, all of which, with the exception of the Transferred Code and Transferred Software (as defined in the "2004 Motion") and related communications and documents, Fareportal and the AFT Trustee have no legitimate interest or right to, as they have nothing to do with the Contested Matter.

5. Attached hereto as **Exhibit A** is a redline to Exhibit 1 of the Revised Order (the "Chen Revised Procedures") that reflects proposed changes to address the Chen Parties' concerns imposing minimal burden upon Fareportal and the AFT Trust, and importantly, causing no delay to the timetable for the sharing of relevant Travana Assets proposed by the Revised Order and streamlining the transfer of Travana Assets relevant to the Contested Matter.

The Chen Parties discussed these proposed changes with the AFT Trust, and understand the AFT Trust has no objection to the concepts reflected by the Chen Revised Procedures.

The Chen Parties ask that the Court enter an order approving Motion with the Chen Revised Procedures.

Dated: Los Angeles, California  
March 1, 2020

**JASON CHEN, EDGAR PARK, AND  
AIRTOURIST HOLDINGS LLC**

By:   
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AirTourist Holdings LLC*

**EXHIBIT A**

**Chen Revised Procedures**

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

|                       |                           |
|-----------------------|---------------------------|
| -----X                |                           |
| In re:                | : Chapter 11              |
| AIRFASTTICKETS, INC., | : Case No. 15-11951 (SHL) |
| Debtor.               | :                         |
| -----X                |                           |

**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**

Upon the motion (the "Motion") of the AFT Trust<sup>1</sup> for an order pursuant to 11 U.S.C. § 105(a) approving *Procedures for the Exchange of Information and Review of Intellectual Property, Software and Related Assets of Travana, Inc. and Fareportal on a Confidential Basis, in Connection with Contested Matter* attached hereto as **Exhibit 1** (the "Procedures"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion; and approval of the Procedures being within the sound discretion of the Court; and the Court finding that reasonable notice of the Motion was provided to all necessary parties; and the Court having determined that no other nor further notice of the Motion is required; and no objections to the relief sought in the Motion having been timely filed; and the Stipulation is within the sound business judgment of the AFT Trust, it is hereby

**ORDERED** that the Procedures, and all of the provisions therein, are approved, and the

<sup>1</sup> To the extent not otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

AFT Trust is authorized to take all actions provided therein; and it is further

**ORDERED** that the Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York  
March \_\_, 2019

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HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**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>1</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, or from otherwise objecting to the 2004 Motion or any discovery performed thereunder, 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 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 and the AFT Trustee shall work together to undertake a source code and/or other intellectual property comparison of the relevant assets transferred to Travana by the Sale Order (the “Transferred Assets,” inclusive of the Transferred Code and the Transferred Software, each as defined in the 2004 Motion) Travana Assets with the relevant Fareportal intellectual property, including without limitation, through the comparison of a copy of the Fareportal

<sup>1</sup> To the extent not otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

Source Code and other intellectual property relevant to Fareportal's assertions in the Fareportal Claim that AFT's intellectual 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 with the relevant ~~Travana-Transferred~~ Assets. Specifically, the Parties agree that each of Fareportal and the AFT Trustee shall direct one qualified third-party software analyst each as employed by (i) Fareportal, and (ii) Force10 Partners, LLC, on behalf of the AFT Trustee (each an "Analyst") to undertake a comparison of the ~~Travana-Source-Transferred~~ Code, with the Fareportal Source Code, and any other pertinent intellectual property of Fareportal with the analogous pertinent Transferred Travana Assets (the "Code Comparison") in the most cooperative, efficient and cost-effective way reasonably possible. The AFT Trust and Fareportal shall split the costs of the AFT Code Comparison.

- 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, subject to paragraph (e) and the below paragraph titled "Restriction on Proprietary Information." Subject to similar protections and process set forth in paragraph (e) and the below paragraph titled "Restriction on Proprietary Information." ~~¶~~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~~Responsive AFT IP (defined in paragraph (e)) it selects.
- e. Within twenty-one (21) days of Fareportal notifying the AFT Trustee of the portion of the Travana Assets it wishes the AFT Trustee to duplicate and transfer to Fareportal (the "Fareportal Requested Travana Assets"), the AFT Trustee shall provide the Chen Parties access to a duplicated copy of the Fareportal Requested Travana Assets. Not more than twenty-seven (27) days of the AFT Trustee receiving notice of the Travana Assets selected by Fareportal pursuant to paragraph (d), the Chen Parties will segregate communications, documents, and code containing or referring to the Transferred Source Code or the Transferred Software, remove or redact any privileged communications, and return or release the segregated communications, documents, and code from the Fareportal Requested Travana Assets (the "Responsive AFT IP") to the AFT Trustee. To be clear, the Responsive AFT IP will contain unaltered copies of the Transferred Code, as duplicated by the AFT Trustee.
- e-f. 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 the Responsive AFT IP copies of those Travana Assets selected by Fareportalsubject to the below paragraph titled "Restriction on Proprietary Information;" 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 subject to similar protections and process set forth in paragraph (e) and the below paragraph titled "Restriction on Proprietary Information."

- 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.
- Restriction on Proprietary Information. The Responsive AFT IP shall be received only by counsel to Fareportal or the Fareportal Analyst and be held on a "professionals' eyes only" basis, meaning the Responsive AFT IP received by Fareportal is viewed only by counsel and the Fareportal Analyst. Any report, analysis, or conclusions of the Code Comparison will not be subject to the "professionals' eyes only" restriction, so long as they do not include Confidential Information.
- Resolution of Fareportal Claims. Within thirty (30) days of resolution of the Contested Matter, Fareportal's counsel and the Fareportal Analyst who have received Confidential Information from the AFT Trustee must destroy such Confidential Information and shall certify such act in a form acceptable to the AFT Trust. Within thirty (30) days of resolution of the Contested Matter, the AFT Trust and the AFT Trust Analyst who have received Confidential Information from Fareportal must destroy such Confidential Information and shall certify such act in a form acceptable to Fareportal.
- 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.

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