

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](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  
es=&searchRequest.IsSearchOnlyDirectFlights=False&searchRe  
 quest.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>
<b>ClassOfService</b>	<b>ClassOfService</b>

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

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:

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

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

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](mailto: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

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: s/ Paul W. Garrity  
Paul W. Garrity  
Jonathan Stoler  
Thomas M. Monahan

30 Rockefeller Plaza  
New York, New York 10112  
Telephone: (212) 653-8700

*Attorneys for Plaintiff Fareportal Inc.*