

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

American Airlines, Inc,

Plaintiffs,

vs.

Travelport Ltd.; Travelport LP; Travelport;  
Orbitz Worldwide, LLC; Sabre Inc.; Sabre  
Holdings Corp., Sabre Travel International  
Limited,

Defendants.

Civil Action No.: 4:11-cv-00244-Y

**SABRE DEFENDANTS' APPENDIX IN SUPPORT OF MOTION TO CONSOLIDATE  
AND MEMORANDUM IN SUPPORT**

Sabre Exhibit	Description	SABRE APPX
1	Plaintiff's Third Amended Petition in Cause No. 067- 249214-10 in the 67 <sup>th</sup> District Court, Tarrant County, Texas	000002 – 000036

Dated: July 18, 2011

Respectfully submitted,

/s/ Scott A. Fredricks

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**CERTIFICATE OF SERVICE**

This is to certify that on this 18<sup>th</sup> day of July 2011, a true and correct copy of the foregoing document was filed electronically via the CM/ECF system, which gave notice to all counsel of record.

*/s/ Scott A. Fredricks* \_\_\_\_\_

Scott A. Fredricks

# **EXHIBIT 1**

**APPX 000001**

AMERICAN AIRLINES, INC.

v.

SABRE INC., et al.

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IN THE JUDICIAL DISTRICT OF  
TARRANT COUNTY, TEXAS  
67TH JUDICIAL DISTRICT

FILED  
TARRANT COUNTY  
2011 JUL - 5 PM 4:44  
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DISTRICT CLERK

**PLAINTIFF'S THIRD AMENDED PETITION**

Plaintiff American Airlines, Inc. ("American") files its Third Amended Petition against defendants and respectfully alleges as follows:

**Discovery Level**

1. In light of the urgency of the matters in issue, discovery should be done on an expedited basis, under a Level 3 plan approved by the Court, pursuant to Rule 190.4.

**Nature of the Action**

2. This is a suit to stop wrongful and unjustified retaliation that threatens to seriously disrupt American's business and harm members of the public and travel industry. Defendants hope to coerce American into abandoning its effort to modernize and streamline the costly legacy system for distributing American's travel data – a system from which defendants exact significant monopoly profits, which they hope to prolong as long as they can.

3. On January 5, 2011, Sabre started retaliatory acts that caused imminent and substantial harm. It began intentionally "biasing" its electronic display of American's flight and fare data in the Sabre distribution system, in direct violation of its contract with American. This bias was irreparably harmful to the public and to American's business and reputation, by eliminating countless sales that American would have earned and by misleading the public into believing that American's services either no longer existed or were not competitive with options offered by competing air carriers.

4. At the same time, Sabre unilaterally more than doubled the fees it charges to distribute American flight/fare data, again in breach of the parties' contract. This completely unjustified price increase threatened to dramatically increase American's annual distribution costs and impose much greater costs on American than Sabre charges to airlines that are not trying or able to implement more efficient distribution methods.

5. Sabre's retaliation caused major harm and disruption. Its GDS is and long has been the largest non-direct source of bookings for the airline. By skewing the electronic display of American flight and fare data, Sabre was impeding or preventing travel agents from readily booking, and American from selling, tickets to untold numbers of potential travelers in this County, across the State and nation, and in markets outside the U.S. This caused needless disruption, loss, inconvenience, and burden, to American, the public, and the travel industry, all to achieve Sabre's goal of preserving the current legacy distribution system.

6. To stop to this irreversible harm, American was forced to seek relief from this Court. On January 10, 2011, after a contested hearing, the Court entered a TRO enjoining Sabre from biasing, disfavoring, or disadvantaging American's fare/flight content within the Sabre GDS. Sabre then agreed to entry of an extended TRO, to last through the Temporary Injunction Hearing, which was set by agreement for February 14, 2011. Subsequently, the parties submitted and the Court signed an Agreed Order abating the case on January 26, 2011, to allow for settlement discussions. The discussions were unsuccessful, and the abatement expired on June 1, 2011.

7. On June 10, 2011, at a hearing before the Court, Sabre publicly announced its plan to terminate the parties' longstanding base distribution contract on August 31, 2011, which will cause American "to go dark" in the Sabre GDS. Again, Sabre's actions would breach

the parties' contract. If Sabre carries out its threat, American flights no longer will be displayed in the Sabre GDS, which was the booking channel for over \$7.7 billion of American's sales last year. Sabre's threatened action would violate both antitrust law and Sabre's contract with American. This violation would be immensely damaging and disruptive to the public, to the travel industry, to competition in this State, and to American's business, and it would jeopardize American's stability and future operations. Unless restrained, Sabre's exclusion of American flights from its GDS, after years of hugely profitable display by Sabre's GDS, will cause widespread confusion, inconvenience, and disruption among the traveling public who rely on travel agents to book American's flights.

8. Sabre's decision to terminate distribution of American's fare content—a long-standing relationship that produces considerable economic rewards for Sabre—is designed solely to thwart and punish American's efforts to encourage a more efficient, lower cost means of distributing its tickets, and to force American to agree to onerous new contract terms that will serve to consolidate Sabre's monopoly power over airline distribution. Indeed, there is no other conceivable explanation for Sabre's threats, and its other retaliatory conduct to date, all of which is directly contrary to what would ordinarily be Sabre's business interest to maximize its bookings of flights on American.

9. In short, American faces another crisis created by Sabre's demonstrated intent to force American to abandon its efforts to move to a more efficient and beneficial model of airline fare distribution. As was the case in January, no one -- not even Sabre -- will benefit from the massive upheaval that Sabre's threatened retaliation is calculated to cause.

#### **Parties**

10. American is a Delaware corporation with its worldwide headquarters in this County, at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155.

11. Defendant Sabre Inc. is a Delaware corporation with its principal place of business at 3150 Sabre Drive, Southlake, Texas 76092. It has appeared by counsel and answered in the case.

12. Defendant Sabre Holdings Corporation ("Sabre Holdings") is a Delaware corporation with its principal place of business at 3150 Sabre Drive, Southlake, Texas 76092. It has appeared by counsel and answered in the case.

13. Defendant Sabre Travel International Limited ("Sabre Travel") is a foreign corporation with its principal place of business at 3150 Sabre Drive, Southlake, Texas 76092. It has appeared by counsel and answered in the case..

#### **Jurisdiction and Venue**

14. The Court has subject matter jurisdiction over this case. The amounts in controversy are within its jurisdictional limits.

15. The Court has personal jurisdiction over defendants. They are foreign corporations that maintain their principal places of business in this County and State; they have committed torts in the State and purposely availed themselves of the benefits of Texas law; they have done substantial business in this State systematically for years; and Sabre Travel has breached a contract entered into in and governed by the laws of this State.

16. Venue is proper in this County, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002. A substantial part of the activities, events, and damages at issue occurred here.

#### **Facts Giving Rise to this Action**

##### **A. Distribution of American's Flight and Fare Information**



17. Three companies – Sabre, Travelport, and Amadeus – operate global distribution systems (“GDSs”) which are the electronic “plumbing” of the travel industry, to connect travel agencies with airline reservations systems. American created Sabre in the early 1960s and operated it for years. American divested its ownership of Sabre beginning in 1996 and fully in 2000. Since then, the two companies have had an unbroken, contractual relationship governing distribution of American’s content through the Sabre GDS that continues to the present day.

18. Each GDS provides a service by which travel information, including fares and availability, for participating air carriers such as American is displayed via a computer to subscribing travel agents (“Subscribers”). Subscribers then use the GDS to book tickets for the public for travel on American or another participating carrier. Of the three GDSs, Sabre is by far the largest; more than 60% of all airline ticket sales made by U.S.-based travel agencies are made through Sabre.

19. Travel agent subscribers do not pay to use Sabre’s services. Rather, Sabre charges its airline customers, such as American, a supracompetitive “booking fee” for each booking that a travel agent makes through its GDS. Sabre then “kicks back” a portion of the fee to the travel agent. Thus, when travel agents decide which GDS to subscribe to, they often have an incentive to choose the GDS that charges the highest, not the lowest, booking fees.

20. American and most other domestic airlines depend upon travel agencies to sell airline tickets to consumers. Although the airlines sell tickets directly to consumers through their websites, call centers, and ticket offices, the majority of airline passenger revenues are generated by tickets sold through travel agencies. Approximately 51% of American’s revenue is

generated by "brick and mortar" travel agencies, and another 10-15% is generated by online agencies, such as Orbitz and Expedia, that use a GDS to make bookings.

21. Business travelers, who account for a disproportionately high share of the revenue of most airlines (including American), are particularly dependent on travel agents. Many businesses contract with a travel agency to manage their employees' business travel, and require that employees use that travel agency when they purchase airline tickets for business travel, even if the traveler locates a less expensive fare elsewhere. Businesses prefer travel agencies because they offer a variety of services, such as ensuring compliance with corporate travel policies, negotiating and implementing corporate contracts for discounted airfares, and accounting and other data management services. Because of these additional services, these business customers would not substitute purchases of tickets directly from individual airlines in response to an increase in the price of services charged, or a decrease in the level of service provided, by travel agents or the GDSs used by travel agents.

22. At present, travel agents rely almost exclusively on GDSs as their source for flight information. Although some travel agencies subscribe to more than one GDS, most rely on a single GDS in any particular location or for any given corporate customer. Using multiple GDSs imposes additional costs on the travel agent because of the additional time, effort, and expense needed to enter a search in more than one GDS, because using multiple GDSs requires additional training costs, and because the travel agent's accounting, billing, and recordkeeping systems typically are designed to interoperate with a particular GDS.

23. Because business travelers purchase nearly all of their tickets through travel agents, and because most travel agents get their flight information through only one GDS,

American and other airlines that wish to sell to business travelers must make their flights available through all three GDSs or else forgo a substantial number of ticket sales.

**B. The Sabre PCA and American's Direct-Connection System**

24. On September 22, 1998, American and The Sabre Group, Inc. entered into the Sabre Participating Carrier Distribution and Services Agreement ("PCA"). On July 31, 2003, the PCA was amended and Sabre Travel replaced Sabre Inc. (formerly known as The Sabre Group, Inc.) in all respects as a party to the PCA. The PCA establishes the flight and fare information that American will make available to Sabre Travel for distribution through its GDS. In turn, the PCA requires Sabre Travel to display American's content in an unbiased manner, meaning that Sabre Travel cannot disfavor American fares relative to otherwise comparable fares of competitors, such as by ranking them lower on the Sabre computer screen. Finally, the PCA sets the booking fees that American pays Sabre Travel for bookings made through Sabre's GDS. Over the years, American has paid Sabre billions of dollars in booking fees, which are the primary source of GDS revenue.

25. In recent years, American has successfully incorporated newer, more robust, and less expensive technologies into the distribution of its products and services. These newer technologies are central to American's distribution strategies, which seek to introduce new and more efficient products that allow it to interact with customers more often, more closely, and more beneficially, in ways that simply are not adequately supported by the current antiquated and costly system dominated by legacy GDSs like Sabre.

26. Sabre is acutely aware that these new technologies – known as "direct connections" – present a competitive threat to its lucrative GDS business. A direct-connection system allows an airline to use the latest technologies to provide access to an airline's fares,

inventory, and other products directly to travel agencies, at a fraction of the cost charged by Sabre and other GDSs. On the other end, technologies exist that allow agencies to incorporate information provided by the direct-connection system seamlessly into other information sources they use, like GDSs. These products – which are offered by numerous vendors, allow a travel agent to efficiently aggregate fares/flight data from multiple sources, so that the agent can make an informed decision among services offered by multiple airlines. Direct-connection systems have existed since the mid 2000s and are now proven technologies that have been used by some of the largest airlines to connect with some of the largest travel agencies.

27. American and its travel agencies have every right to use direct-connection technology in lieu of or along with more expensive, less capable, and less efficient legacy GDS systems. For several reasons, however, the unlawful conduct of Sabre has prevented these alternative distribution methods from displacing or even exerting competitive pricing discipline on the GDSs.

28. In theory, American could encourage the GDSs to compete with respect to booking fees by withholding its participation in a particular GDS since, over time, a GDS that does not provide airline ticketing services for an airline like American would be less valuable to consumers and thus to travel agents. In reality, however, this would cause American to suffer immediate and enormous harm in Texas from the loss of ticket sales by travel agent subscribers to the GDS. The GDS, on the other hand, would suffer only future, and uncertain, costs due to its inability to book American's tickets because it is protected from immediate harm by high switching costs and long-term contracts with travel agents. The loss of a significant number of ticket sales is a sacrifice that neither American, nor any other network airline, can afford to make and remain a viable airline competitor.

29. Sabre's contracts with travel agents also inhibit American's ability to shift bookings away from Sabre. These contracts tend to have long terms and are effectively exclusive because they are structured to reward travel agents with hefty "incentive payments" for booking all, or substantially all, of their segments through Sabre to the exclusion of any other distribution method. A travel agent that fails to book a sufficient number of segments through Sabre is penalized with "shortfall fees" that strip away the incentive payments for *all* of that agency's bookings. Thus, for American to encourage a travel agent to book through non-Sabre methods, it would have to reimburse the agent not only for the incentive payments the agent lost for American's bookings, but also for lost payments for *every other* ticket sale as well, even though those other sales still went through the GDS and even though American received no revenue from them. This effectively makes it impossible for American to incentivize agents to switch to direct-connection distribution even though it is more efficient.

30. Finally, Sabre has engaged in a sustained campaign of retaliatory conduct designed to thwart Americans' and other airlines' attempts to shift bookings to lower-cost alternatives. Sabre has retaliated aggressively in response to American's attempts to work with travel agents to lower distribution costs. Sabre has also engaged in similar retaliatory conduct against other airlines, as well as third parties that sought to help the airlines implement lower-cost distribution alternatives.

31. Sabre's recent rhetoric confirms that it intends to inflict further substantial, largely incalculable, and irreparable harm to American's business and reputation, to coerce American to abandon its competitive initiative and continue to rely on the legacy GDSs as the primary method of distributing travel content to travel agencies, and thereby protect Sabre's supracompetitive profits.

**C. The Amended Sabre Distribution Contract**

32. On September 1, 2006, American and Sabre Travel signed an amendment to the PCA called the Distribution Content and Modified Payments Amendment ("Amended PCA"). The Amended PCA states that American is to provide Sabre Travel timely, accurate, and complete access to American's "Full Content." Full Content means all publicly available fares and related schedule information and seat availability. American has complied with all obligations to provide Full Content under the Amended PCA, even though Sabre's insistence on the clause is anticompetitive and contrary to Texas law. The clause makes it impossible for American to encourage Sabre subscribers to move to lower-cost distribution channels by making more-desirable content available through those channels.

33. In return for Full Content, Sabre has a duty to properly display American's flight and fare data. Sabre may not knowingly disadvantage or disfavor American's content within the Sabre GDS relative to any other carrier that participates in the Sabre GDS.

34. Travel agencies expect fair and unbiased display of American's travel information through the Sabre GDS. So do federal regulators, including the U.S. Department of Transportation ("DOT"). In 2004, when the GDSs were no longer owned by airlines and the DOT decided to deregulate GDSs, it cautioned that "there is some potential for conduct by the systems that could prejudice airline competition (most notably the sale of display bias)."

35. Sabre has long been aware of American's Direct Connection system. In fact, the technology was discussed in the parties' last contract negotiations almost five years ago, and the Direct Connection financial program is mentioned by name in the Amended PCA. American has complied with its obligations under the Amended PCA.

**D. American's Your Choice Program**

36. On June 15, 2010, in its ongoing effort to better serve the traveling public and its customers, American announced its "Your Choice" program. Designed to make the travel experience more personalized, cost-effective, and flexible, Your Choice offers extra services that passengers can buy for a modest fee at the time of booking. The initial offering of the Your Choice program was the "Boarding and Flexibility Package," which offers customers without elite frequent flyer status the option to receive priority boarding, free standby rights, and a \$75 discount off of the normal \$150 change fee fare rule. American files a "fare basis code" specially designated for the Boarding and Flexibility Package, which code it makes available to Sabre for distribution to its Subscribers via its GDS.

37. Customers who book the Boarding and Flexibility Package fare basis code directly with American – through AA.com or the Direct Connection system – receive additional services that are not available to customers who book that fare basis code indirectly, through a GDS. Thus, customers who book through Sabre can receive a reduced change fee. Those who customize their travel experience by buying directly, through AA.com or the Direct Connection system, also can receive priority boarding and free standby rights. Your Choice services also include in-flight Internet access, confirmed flight change, and Admirals Club® access, but at this time only the Boarding and Flexibility Package is available to agencies using Direct Connect technology.

38. In July 2010, Sabre questioned the Your Choice program in an email to American. It claimed that American was obligated to provide to Sabre access to all Your Choice services for distribution to Subscribers through the Sabre GDS. On August 4, 2010, American answered Sabre's questions with a written response that explained how Your Choice complies with American's duties under the amended PCA. Sabre took no action.

**E. Attacks Coordinated by Sabre**

39. Over the past several years, American has been developing, promoting, and using its new direct-connect technology with individual travel agencies. One of these agencies, Orbitz, is the third largest online agency in the U.S and was established as a direct connect-centered agency by its then airline owners. In 2006, a company affiliated with Travelport, the second largest GDS in the U.S. (after Sabre), acquired a controlling interest in Orbitz. Thereafter, Orbitz began increasing its use of GDSs to distribute American's product by reducing the number of bookings processed through "Supplier Link," a direct-connection system used by Orbitz.

40. In mid 2010, American was in negotiations with Orbitz to return it to a cost-effective, direct-connect agency. Over time, it became clear that Orbitz was unwilling – or, we now know, unable – to implement American's newest direct-connect technologies. Unbeknownst to American then, Travelport – intending to replace Orbitz's direct-connect bookings with more expensive Travelport GDS bookings – had entered a contract with Orbitz that expressly prohibited Orbitz from using an American direct-connection system. In late 2010, Orbitz announced it would not implement a new direct-connection system with American. On November 1, 2010, American notified Orbitz that it was terminating their relationship.

41. American's decision to end its relationship with Orbitz generated much trade press coverage. Defendants (and others) saw American's decision as an opportunity to ramp up a coordinated public relations campaign against its Direct Connection efforts. They feared that if an agency like Orbitz recommitted itself to a direct-connect relationship, other agencies would see that the technologies were not only viable, but also superior to GDSs. Sabre vigorously argued against the use of direct-connection systems, both to the industry generally



and to Subscribers (travel agencies), grossly misrepresenting the capabilities of direct-connection systems, as well as American's intentions in seeking to expand their use. Indeed, Sabre began recruiting travel agencies to join a new group that Sabre apparently has created – the so-called “Open Allies for Airfare Transparency” – whose avowed anti-technology purpose is to “oppose efforts from airlines to create proprietary ‘direct connect’ systems.”

42. Responding to GDS criticism and misinformation, American explained its strategy and the direct-connection technology, as it is entitled to do. For example, the Sabre-led coalition was misleading the public, consumers, and the press by arguing that American intended to use direct connections to make it more difficult and expensive for travel agencies to compare options. In fact, proven technologies were already in place, and in some instances were being marketed by GDSs, that would allow agencies to easily aggregate and compare American's services to those of other carriers. That is precisely what Orbitz had done for years, and consumers had used their website to shop for and compare services of multiple airlines in a completely transparent and easy to use display. Orbitz began moving away from receiving information directly from airlines only after it was became controlled by entities with an ownership interest in Travelport.

43. The Travelport agreement with Southwest Airlines is another example of a beneficial direct-connection approach. It allows agents to receive information from Southwest directly and, using a Travelport product known as Universal API, Southwest data is seamlessly aggregated with information of other airlines for easy comparison shopping. When American asked Travelport for the same type of agreement, Travelport refused. It simply said that American helped create the GDS “beast” and should “continue to live with it.”

44. American had no expectation or intent that direct-connection technologies would eliminate choice or make its selling process less transparent. To correct misinformation in the marketplace spread by Sabre and others, as well as questions from travel agencies, American explained that its direct-connection strategy was motivated by a desire to reduce costs and offer more and better product offering to its customers.

45. This generated substantial industry discussion about American's strategy and system, as the trade press reported on the option, other innovations, and American's vision for modernizing the antiquated distribution system for airline fares. For months, American has been answering media questions about the program, laying out the pros and cons of a direct-connection system. Sabre never objected to the propriety of American's statements, responses, and explanations about its innovative direct-connection system – until January 5, 2011, when it began its punitive, anticompetitive retaliation by introducing bias against American's services.

**1. Travelport Attacks American**

46. On November 1, 2010, American gave 30-days notice to Orbitz that it intended to terminate certain negotiated agreements with Orbitz.

47. In response, the same day, Travelport notified American that it would raise by 100% the booking fees it charges for bookings of American flights by Travelport subscribers in markets outside the United States. Travelport says Orbitz is one of its largest customers, and a Travelport affiliate has an ownership interest in Orbitz. American was advised that the doubled Travelport booking fee is purely punitive, to retaliate against American for terminating the Orbitz agreement.

48. Years earlier, on July 5, 2006, American and Galileo entered into a Preferred Fares Amendment that covers certain rights and obligations with regard to American's

provision of content to Galileo. Travelport claims to be the successor-in-interest to Galileo with respect to the Preferred Fares Amendment. It claimed that American's termination of certain contracts between American and Orbitz constitutes a breach or will result in a breach of certain provisions of the Preferred Fares Amendment. It also contended that American's actions will induce Orbitz to breach its subscriber agreement with Travelport.

49. On November 5, 2010, Travelport sued American in Chicago. In a case filed in the Circuit Court of Cook County, Travelport tried to enjoin American's termination of Orbitz. On the same day, American sued Travelport in this County for declaratory relief concerning the dispute. American subsequently nonsuited Travelport without prejudice.

50. By this time, American's commercial discussions with Orbitz became a public topic, since Orbitz publicly disclosed the parties' disagreement in an S.E.C. filing. The Orbitz CEO has accused American of trying to force travel agencies to get information directly from the company instead of through GDSs, despite the fact that Orbitz had been receiving content directly from American and other airlines for years.

51. On December 21, 2010, the Chicago court denied Travelport's motion to preliminary enjoin termination of the contract. American then terminated the Orbitz agreement.

## **2. Expedia Attacks American**

52. On December 23, 2010, another major online travel agency, Expedia, began to retaliate against American in stated support for Orbitz. Expedia began biasing American's flights and schedules, by deliberately listing them lower in the Expedia.com search display than those of other airlines. In response, American announced that it would continue to provide its airfare content to travel agencies, both through GDSs and its Direct Connect partners.

53. On January 1, 2011, Expedia completely removed American's flight and fare content from Expedia.com. Expedia's statement on the subject publicly attacked the direct connection strategy: "American Airlines is attempting to introduce a new direct connect model that will result in high costs and reduced transparency for consumers, making it difficult to compare American Airlines' ticket prices and options."

54. American believes a PR campaign against its direct-connection strategy and system has been coordinated by the GDSs, who intend to protect their high booking fees by preserving an antiquated, costly legacy distribution system. Thus, a November 29, 2010 article in Business Travel News reported that Travelport "is circulating a memo that offers 'myth-busting' on AA's direct-connect initiative. For example, Travelport wrote that it is a myth that 'direct connect makes the best economic sense for agencies.'"

### **3. Sabre Attacks American**

55. Following closely behind Travelport and Expedia, Sabre unleashed its own retaliatory and coordinated actions against American.

56. On January 5, 2011, Sabre gave public notice that it would no longer fulfill its contract duty to fairly and accurately display, and not to bias, American's flight and fare content within the Sabre GDS. Sabre deliberately introduced a deceptive and harmful bias in its electronic GDS display of American's content, making it difficult or virtually impossible for travel agents easily and quickly to access information regarding American's flight and fare information. Sabre made changes in its GDS "that alter the order in which some of American Airlines' flights appear in availability and shopping displays." Sabre admitted the disruption caused by its action, acknowledging customer "concerns regarding the potential impact of these actions on these operations."

57. Prior to January 5, Sabre actively sought the support of certain travel agencies for its plan to wrongfully bias American's content. In response to Sabre's request, one travel agency agreed to allow Sabre to override its normal display rules for all its markets except those where the financial impact on the agency would be too significant for it to bear. While the biasing was ongoing, another agency agreed to Sabre's request to replace its preferences for American's flights for the flights of another airline.

58. Sabre tried to justify its wrongful bias by falsely claiming – for the first time – that American breached the Amended PCA. First, Sabre alleged that its anti-bias duty was terminated because American supposedly had publicly “marketed” a Direct Connect “program” through the media or at industry meetings to GDS subscribers, which American has never done. Under the Amended PCA, a program for a Direct Connection system would consist of financial compensation in a variety of forms. American has never publicly marketed such a program. Second, although American fully complied with its obligation to provide Full Content for distribution via the Sabre GDS, Sabre disparaged American by claiming, without detail, that “American has taken action to impose a costly, unproven and unnecessary system, while withholding some fare content” that “makes it harder and more costly to comparison shop.” In fact, American has not withheld “fare content.”

59. On January 5, 2011, Sabre gave public notice that, effective immediately, it unilaterally increased – by more than double – the fees it charges to American for bookings made by Sabre Subscribers of American's flights in the United States, Caribbean, Canada, Mexico, Europe, the South Pacific, Asia, Latin America, the Middle East, and Africa. Sabre said that it was “eliminating the substantial price discounts [American] has enjoyed consistent with its prior long-term commitments to provide full content.”

60. Sabre's increases were unjustified and wholly punitive. American has always provided it access to Full Content under the Amended PCA. Sabre had no valid basis to double its booking fees.

**F. TRO Against Sabre and Subsequent Developments**

61. On January 10, 2011, at American's request and after a contested hearing, the Court entered a TRO enjoining Sabre from biasing, disfavoring, or disadvantaging American content within the Sabre GDS. Expedited discovery then commenced in earnest, in preparation for an expected Temporary Injunction hearing. On January 21, 2011, Sabre agreed to an order extending the TRO for several weeks, through the date of the Temporary Injunction hearing. Subsequently, the Court signed an Agreed Order abating the case to allow for settlement discussions. The discussions were unsuccessful, and the abatement expired on June 1, 2011.

62. Sabre had agreed that during the abatement it would not bias American's content. But on several occasions during this period, American received reports that its flights were missing from the Sabre GDS.

63. Just minutes after midnight on June 1, 2011, Sabre filed papers in the Federal District Court for the Northern District of Texas, Fort Worth Division, seeking to intervene in an antitrust suit filed by American against Travelport and Orbitz, and to file Sabre's own antitrust and other claims against American. Later that day, American amended its federal complaint to add Sabre to the litigation.

64. Subsequently, although Sabre has not notified American that it is biasing American's content, American has encountered a number of instances where Sabre Subscribers have been unable to access American's content in Sabre's GDS. For example, a Sabre Subscriber has not been able to price American's itineraries. Another Sabre Subscriber found

certain American fares were unavailable in the Sabre GDS, even though there was availability. In yet another instance, a customer specified itinerary did not return any American's flight, even though American had flights available on that route.

65. On July 8, Sabre notified American that effectively immediately it was again unilaterally and substantially increasing the fees it charges to American for bookings made by Sabre Subscribers of American's flights in the United States and Caribbean.

**G. Subsequent Developments with Expedia, Travelport and Orbitz**

66. American has been engaged in extensive discussions with Expedia, Travelport, and Orbitz concerning the distribution of its fares and schedules.

67. On April 4, 2011, American and Expedia agreed to a memorandum of understanding which provides that that Expedia will begin to access American fares and services by a direct connect link, using technology provided by a GDS. As a result, American fares again are available on Expedia.com.

68. Unable to resolve its dispute with Travelport and Orbitz over distribution of its content, on April 12, American filed suit against Travelport and Orbitz in the Federal District Court for the Northern District of Texas, Fort Worth Division, to stop exclusionary and anticompetitive business practices and recover monetary damages for violations of Sections 1 and 2 of the Sherman Act and Texas law. The suit states that Travelport, which effectively controls the distribution of American's fares and services to a large number of travel agencies and corporate customers, has engaged in anticompetitive conduct to protect its market position from new competition by American's Direct Connect technology. The suit also claims that Travelport and Orbitz have harmed consumers by suppressing innovation that would be beneficial to airline passengers.

69. On June 1, 2011, the Chicago court, with a new presiding judge who had not heard the evidence at the injunction hearing, granted Travelport's motion for reconsideration of the Court's denial of Travelport's request for a preliminary injunction and enjoined termination of American's contract with Orbitz. Accordingly, American resumed providing its fare/flight data for display on Orbitz.com.

**H. Sabre threatens the wholesale removal of American's flights from its GDS**

70. The Amended PCA has a stated term of five years, through September 1, 2011. Sabre contends that the Amended PCA expires on August 31, 2011. It also now alleges that the underlying PCA -- which has been in place since 1998, obligates Sabre to distribute American's flights, and has no fixed term -- expires on August 31 as well.

71. The terms of the Amended PCA expressly contradict Sabre's new position that the underlying PCA, which it amends, terminates with it. The terms make clear that the Amended Sabre PCA -- the PCA as amended by the Distribution Content and Modified Payments Amendment -- is distinct from the PCA. While the term for the Amended PCA expires on September 1, 2011, the fifth anniversary of the effective date, the term for the underlying contract, namely the unamended PCA, is not provided in the Amended PCA. The term provision for the PCA remains in force separate from the Amended PCA. Other terms of the Amended PCA also confirm that the term of it and the underlying PCA are not coterminous.

72. Sabre is insisting that it will terminate its business relationship with American unless American agrees to be locked into a new long-term contract with onerous, anticompetitive terms. In particular, Sabre refuses to deal with American—ending a long-standing and consistently profitable business relationship—unless American agrees to a Full Content clause that would prevent American from offering enhanced or more-flexible fare and



flight content through non-Sabre distribution channels. Sabre's insistence on a "full content" requirement is exclusionary and anticompetitive because it prevents American from encouraging travel agents or consumers to use alternative, less-costly distribution channels by making certain content available only through those channels. Thus, a full-content provision hurts both competition and consumers in Texas while simultaneously maintaining Sabre's monopoly power.

73. Furthermore, the full-content provision on which Sabre insists would prevent American from providing premium content through other distributors *even if* Sabre's own outdated computer systems are incapable of processing that content. Because Sabre, due to its own lack of investment in its infrastructure, cannot offer certain types of fares, it seeks to tie American's hands so that *no one* can offer them. Such a tactic is baldly anticompetitive, as it destroys any incentive for airlines and distribution system providers to innovate and robs consumers of the fruits of such innovation, especially in Texas.

74. In addition to the full-content provision, Sabre has threatened to terminate American unless it accepts several other illegal and anticompetitive provisions, including several that are even more exclusionary and restrictive than the terms of the existing Amended PCA.

75. Just as the contract provisions upon which it insists are anticompetitive and exclusionary, so too is Sabre's refusal to deal with American unless American accepts them. American cannot afford to forgo revenue from the business travelers who buy tickets through Sabre subscribers. Thus, unless Sabre is enjoined from terminating the parties' longstanding relationship, American may have no choice but to agree to whatever onerous terms Sabre insists upon. The result will be continued maintenance of Sabre's monopoly, harm to American in Texas in the form of higher booking fees and degraded service, and harm to consumers and competition in Texas in the form of higher prices and stifled innovation. Indeed, Sabre is fully

aware of its power to destroy American's business and of American's inability to withstand the punitive actions it is threatening, and has again commenced taking. In fact, it is this very understanding that is driving its strategy of taking punitive actions against American, which but for its anticompetitive campaign to quash the direct connect initiative, would be entirely contrary to Sabre's own business interests—and are contrary to any *legitimate* business interest it might have. Even if American can somehow withstand Sabre's refusal to deal, its business will suffer severe damage and consumers will be harmed by decreased competition, the higher fares that result from Sabre's monopoly pricing, and diminished innovation. Either way, Sabre will have sent a clear message to other airlines and third-party distribution providers that any attempts to reduce distribution costs or challenge Sabre's distribution monopoly will be crushed.

76. There is no procompetitive justification for Sabre's decision to terminate its longstanding course of business with American. Doing business with American under the terms of the PCA is highly profitable for Sabre—in fact, it is more profitable than doing business under the Amended PCA because the PCA calls for higher booking fees. By terminating American, Sabre would also make its services less desirable to travel agents, who would no longer be able to offer their customers tickets on one of the country's largest airlines. Thus, it is clear that Sabre's refusal to deal is based not on any legitimate business justification but rather on a desire to force American to accept anticompetitive restrictions on its ability to innovate, compete, and lower costs. Sabre has decided to sacrifice short-term profits for long-term anticompetitive gains.

**I. Sabre's conduct did and will cause American irreparable harm.**

77. Until it was enjoined, Sabre's retaliatory actions caused irreparable harm the public, to the travel industry, and to American, by undermining its goodwill with the travel

agency community, corporate customers, and consumers and by disrupting its business. Sabre's retaliation caused American to lose ticket sales in amounts which are impossible to quantify due in part to the fact that American was simultaneously dealing with the retaliatory actions taken by Expedia, Orbitz, and Travelport, which then was biasing its GDS display of American's flights in markets outside the United States. Even greater irreparable harm will be inflicted on American if Sabre is not enjoined from removing American flights from its GDS, as it now has threatened to do.

78. Until it was enjoined, Sabre's retaliatory actions caused significant, unwarranted confusion, frustration, and anger in the travel industry and with American's corporate customers. It forced travel agents to take extra steps to locate American's fares because it buried American's fares by listing them at the bottom of the screen viewed by travel agencies (or dropping them for the first screen entirely), even where these were the least expensive or best scheduling options for the customer. Travel agents, who were frustrated with the situation, complained about Sabre's biasing, viewed American negatively because of it, and choose to book tickets on airlines other than American. All of this undermined American's goodwill and positive relations with its travel agents in this Country and elsewhere. If Sabre is not enjoined from removing American's flights from its GDS and from implementing other facets of its anticompetitive scheme, the confusion, frustration, and anger in the travel industry caused by Sabre will reach unprecedented levels, as travel agents that use the Sabre GDS will have no access to American's flights.

79. Until it was enjoined, Sabre's retaliatory actions caused frustration with corporate customers who use the Sabre GDS to obtain American's fares. Corporate customers expressed irritation and anger towards American because of unwarranted delays and difficulties

caused by Sabre's conduct. These corporate customers likely chose to book on airlines other than American. Indeed, a corporate account threatened to stop doing business with American because of Sabre's retaliatory biasing. This severely undermined American's goodwill and good relations that have been built up over many years with corporate customers. If Sabre is not enjoined from removing American flights from its GDS, American's goodwill and positive relations with corporate customers will be destroyed, as valuable corporate customers who use the Sabre GDS will be forced to book on airlines other than American, despite the fact that many have negotiated deals with American for access to special fares.

80. Until it was enjoined, Sabre's retaliatory actions triggered significant confusion in the consumer marketplace. It led consumers to believe incorrectly that American was the instigator of a move that causes them inconvenience, delay, and potential extra expense, because American's fares were not as readily available from Sabre travel agencies as consumers have come to expect, even when American's fares were cheaper than competing airlines. This adverse impact on consumers was especially pronounced here in this County and in other areas where American is the preferred airline. If Sabre is not enjoined from removing American flights from its GDS, consumers will unwittingly lack access to American's flights, if they happen to use a travel agency that is a Sabre Subscriber. This will cause confusion, inconvenience, delay, and potential extra expense for consumers.

81. Extensive media coverage of Sabre's retaliatory actions gave consumers the false impression that American is an anti-consumer company, a deception that Sabre openly promoted. This led to negative word-of-mouth campaigns that continue to this day – and that are likely coordinated by Sabre and other GDSs – particularly in social media, that question American's motives, integrity, and commitment to consumers. This harms American's goodwill.

82. Until it was enjoined, Sabre's retaliatory actions also caused confusion among consumers who purchase tickets from airlines other than American solely because they are not aware of the better options for travel – more convenient, cheaper, or both – that American has to offer, but which Sabre was deliberately hiding. Such confusion harmed American's goodwill. If Sabre is not enjoined from removing American flights from its GDS, the harm to American's goodwill will be irreparable, as consumers are prevented from accessing better options for travel that American has to offer, but which Sabre is refusing to make available.

83. In addition, until it was enjoined by the Court, Sabre's retaliatory actions severely disrupted American's business. American was forced to develop a marketing and advertising strategy devoted to making sure its customers knew how to access American's fares that were no longer readily available through Sabre's GDS. American was forced to invest public communications and resources on marketing and advertising focused on clarifying the availability of American's fares to its customers. The advertising resources that American was forced to dedicate to this effort were to the detriment of other areas where American could have better used its resources to support its business. The disruption caused by Sabre's retaliatory actions had ripple effects company-wide, as American's executive team and employees were forced to set aside other responsibilities to respond to Sabre's wrongful actions. Indeed, between January 5, when Sabre announced its wrongful conduct, and January 10, when the Court enjoined it, executives on American's sales team spent *all* of their professional time and resources addressing it. It created extensive and unnecessary turmoil for American's employees.

84. If Sabre is not enjoined from removing American flights from its GDS, the disruption to American's business will be even more significant. Because Sabre is far-and-away the largest distributor of American's content and the distribution channel through which

American does the majority of its business, American's capability to serve its customers here and elsewhere will be jeopardized. The turmoil that will be inflicted on American's employees, customers, the traveling public, and this County will be dramatic.

**J. Antitrust Market Definition**

85. The distribution of airline fare, flight, and availability information and the provision of reservations and ticketing capability to travel agents ("the provision of airline booking services") is a relevant product market for purposes of the Texas Free Enterprise and Antitrust Act of 1983 ("TFEAA"). The overwhelming majority of business travelers rely on travel agents to identify flights and fares and to purchase tickets for travel on network airlines. These travelers do not view other ways of purchasing airline travel, such as purchasing through an airline website, as a reasonable substitute for purchasing tickets through a travel agency. Because an airline that does not distribute its tickets through travel agencies would lose a significant number of ticket sales for business travel to competing airlines, American does not consider the use of other distribution channels, such as an airline's website, to be a reasonable substitute for the provision of airline booking services to travel agents.

86. The provision of airline booking services to Sabre subscribers is a relevant product submarket. Due in substantial part to the anticompetitive and exclusionary conduct at issue in this case, American has little ability to shift bookings from customers of Sabre's subscribers to other GDSs, direct connect, or other distribution channels when Sabre increases its booking fees or degrades the quality of its displays. Thus, other providers of airline booking services do not serve as a competitive check on Sabre's ability to raise prices or reduce the services it provides to American. If American and other network airlines want to sell tickets to

travelers that use a Sabre travel agency, they have no practical alternative but to participate in the Sabre GDS.

87. The relevant geographic market is the United States.

#### **K. Barriers to Entry**

88. The relevant markets are characterized by durable barriers to entry by new GDSs that protect the monopoly power of the incumbent GDS providers. Since 2004, at least three companies, ITA, G2 Switchworks, and Farelogix, have attempted to launch a new GDS, and all have failed. There has been no successful entry of a new GDS in the U.S. in over 25 years. Defendants' anticompetitive conduct and agreements have reinforced these barriers to entry by rival GDSs.

89. Newer, more efficient technologies such as American's direct-connection system do not face the same entry barriers from fixed costs and network effects as a GDS entrant. However, defendants' anticompetitive conduct and agreements have erected substantial barriers to entry by alternative methods of providing airline booking services, and have effectively foreclosed alternative distribution systems from the market.

#### **L. Market Power**

90. The market for the provision of airline booking services in the United States is highly concentrated, with only a few market participants. Sabre possesses substantial market power in this market.

91. Sabre possesses monopoly power in the submarket for the provision of airline booking services to Sabre subscribers in the United States. In this submarket, Sabre possesses a dominant market share. Sabre's monopoly power over American is demonstrated by recent events. For example, Sabre was able to double American's booking fees while also

degrading the quality of services it provides American by biasing its displays against it. Sabre was not constrained in its ability to take this action against American because it knew that American would not be able to respond to Sabre's actions by shifting its tickets sales to alternative distribution channels. In fact, Sabre has repeatedly demonstrated and used its power to raise prices and exclude competitors.

**First Cause of Action  
(Breach of Contract by Sabre Travel)**

92. American realleges the material facts in the preceding paragraphs.

93. The Amended PCA is a valid, enforceable contract binding on Sabre Travel, and as a party American is entitled to sue for its breach. American has met all conditions precedent to and otherwise complied with the Amended PCA.

94. By intentionally disfavoring and disadvantaging the display of American's content in its GDS, Sabre Travel has breached the Amended PCA. Its breach is material, willful, and without excuse.

95. By unilaterally increasing American's fees for flights booked by Sabre Subscribers through its GDS, Sabre Travel has breached the Amended PCA. Its breach is material, willful, and without excuse.

96. American has been damaged by Sabre Travel's breaches of the Amended PCA.

97. American suffered irreparable harm that cannot be compensated with money damages due to Sabre Travel's disfavoring and disadvantaging of American's flight and fare content in the Sabre GDS and Sabre has threatened to resume its misconduct. If Sabre does so, American will suffer irreparable harm that cannot be compensated with money damages.



Because American's legal remedy will not be adequate to compensate for irreparable injuries inflicted by Sabre Travel, American will be entitled to injunctive relief.

**Second Cause of Action  
(Tortious Interference with Prospective  
Business Relations By All Sabre Defendants)**

98. American realleges the material facts in the preceding paragraphs.

99. The Sabre defendants have, individually and collectively, wrongfully and intentionally interfered with American's reasonable expectation of prospective business relationships with the travelling public that would purchase tickets for air transportation on American. Defendants have committed independently tortious acts by using misleading and deceptive acts and practices in commerce, including by disparaging American's services by false or misleading representations of fact, which have interfered with American's prospective business relations with various travel agents and other consumers of American's services.

100. Defendants' tortious interference has proximately caused American to suffer actual damages.

101. Defendants conduct was malicious and grossly negligent.

**Third Cause of Action  
(Monopolization in Violation of the  
Texas Free Enterprise and Antitrust Act of 1983)**

102. American realleges the material facts in the preceding paragraphs.

103. Sabre possesses monopoly power in the market for the provision of airline booking services to travel agencies that subscribe to its GDSs. Through anticompetitive and exclusionary acts and practices, Sabre has willfully maintained, and unless restrained by this Court, will continue to maintain and abuse, that monopoly power. Sabre has acted with intent to illegally maintain its monopoly over the provision of airline booking services to its subscribers

and its illegal conduct has enabled it to do so in violation of the Texas Free Enterprise and Antitrust Act 1983, Section 15.05(b) of the Texas Business and Commerce Code.

104. Sabre's illegal conduct has directly and proximately caused injury to American's business and property and to competition in Texas. American will be forced to continue paying monopoly prices for access to Sabre's GDS, and Sabre will continue to block price competition among GDSs as well as competition from newer technology and more efficient means of distribution of airline services to travel agents. These injuries, in the form of higher prices and less innovation in Texas, are of the type the antitrust laws are intended to prohibit and thus constitute antitrust injuries in Texas.

105. Sabre's illegal conduct was willful and/or flagrant. Therefore, American is entitled to treble damages, including a reasonable attorney fees, under Section 15.21(a)(1) of the Texas Business and Commerce Code.

**Fourth Cause of Action  
(Declaratory Judgment as to Sabre Travel)**

106. American realleges the material facts in the preceding paragraphs.

107. There is a real, substantial, and justiciable controversy about the rights and status of the parties under the Amended PCA. Declaratory relief will resolve the controversy.

108. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.006, all persons that have any interest in the declarations sought by American are parties to this proceeding.

109. Pursuant to Tex. Civ. Prac. & Rem. Code § 37.007, *et seq.*, American seeks a declaration of the respective rights and duties of the parties under the Amended PCA. Specifically, American seeks a declaration and judgment that the Amended PCA's Term provision does not provide for the termination of the PCA.

110. American will suffer irreparable harm that cannot be compensated with money damages if Sabre wrongfully terminates the PCA. Because American's legal remedy is not adequate to compensate for irreparable injuries that will be inflicted by Sabre Travel, American is entitled to injunctive relief.

#### **Attorney Fees**

111. American has been required to retain attorneys to protect its rights and prosecute this claim. Pursuant to Tex. Civ. Prac. & Rem. Code §§ 38.001 and 37.009, American is entitled to recover its reasonable attorney fees and costs necessarily expended in this matter. All conditions precedents have been performed or have occurred.

#### **Jury Demand**

112. American demands that its claims be tried by a jury.

#### **Prayer for Relief**

For these reasons, plaintiff American Airlines, Inc. respectfully asks the Court to invoke its equitable powers to enjoin Sabre Travel from terminating the PCA pending trial on the merits. In addition, should Sabre make true on its threat to resume biasing the display of American's flight and fare information, American asks the Court to again invoke its equitable powers to enjoin Sabre Travel from biasing, disfavoring, or otherwise disadvantaging American's content within the primary search, display, and pricing functions of the Sabre GDS relative to any other carrier that participates in the Sabre GDS. American requests judgment, after trial or final hearing, as follows:

- a) That the Court enter final judgment against Sabre Travel that it has breached the Amended PCA and against the Sabre defendants that they tortiously interfered with American's prospective business relations;
- b) That the Court enter a final judgment for declaratory relief that the Amended PCA does not provide for termination of the PCA;

- c) That the Court declare that the conduct of Sabre violates the Texas Free Enterprise and Antitrust Act;
- c) That the Court order defendants to pay actual damages to American, to the extent they are calculable, and to pay treble the amount of damages American has suffered as a result of Sabre's illegal acts, plus exemplary damages, plus its court costs and reasonable attorney fees incurred in prosecuting this action;
- c) That the Court order defendants to pay pre-judgment and post-judgment interest as may be allowed by law;
- d) That the Court enter permanent injunctive relief prohibiting Sabre Travel from terminating the PCA and forbidding Sabre from threatening or engaging in unlawful retaliatory conduct with American, because American will suffer irreparable harm if injunctive relief is not provided; and
- e) That the Court grant to American all additional relief to which it has shown itself to be justly entitled, whether at law or in equity.

Respectfully submitted,



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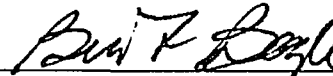
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**CERTIFICATE OF SERVICE**

I certify that on this 8th day of July, 2011, a true copy of this document was served on all counsel for the Sabre defendants by hand delivery and/or facsimile.



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July 8, 2011

VIA HAND-DELIVERY

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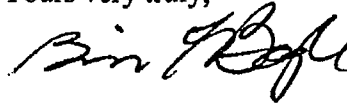
Re: Cause No. 067-249214-10; *American Airlines, Inc. v. Sabre Inc., et al.*;  
In the 67th Judicial District Court of Tarrant County, Texas

Dear Ms. Lawson:

Enclosed is the original and one copy of the Plaintiff's Third Amended Petition for the above matter. Please file the original among the papers of this cause, and file mark the copy to be returned to me via my courier.

By copy of this letter, I am forwarding a copy of same to all opposing counsel of record. Thank you for your assistance.

Yours very truly,



Bill F. Bogle

BFB/ktb  
Enclosures

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July 8, 2011  
Page 2

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