

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AMERICAN AIRLINES, INC.,)	
)	
Plaintiff,)	
)	Case No. 4:11-cv-00244-Y
vs.)	
)	
TRAVELPORT LIMITED, et al.,)	
)	
Defendants.)	
)	

**APPENDIX TO OPPOSITION TO AMERICAN AIRLINES, INC.'S
MOTION TO AMEND THE PROTECTIVE ORDER**

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Dated: July 9, 2012

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS
TRAVELPORT LIMITED and
TRAVELPORT, LP**

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 2012, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, Fort Worth Division, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Craig G. Falls
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AMERICAN AIRLINES, INC. §
§
VS. § CIVIL ACTION NO. 4:11-CV-244-Y
§
TRAVELPORT LIMITED, et al. §

FIRST AMENDED STIPULATED PROTECTIVE ORDER

The Court enters this First Amended Stipulated Protective Order (“Protective Order”) pursuant to Federal Rule of Civil Procedure 26. The parties stipulate as follows:

1. Certain documents and information have been and may be sought, produced, or exhibited by and between the parties to the above-styled proceeding (“Proceeding”) that relate to the parties’ trade secrets, confidential information, and other kinds of commercially sensitive information that the party making the production deems confidential; and
2. To preserve the confidentiality of certain documents and information, a protective order should be entered by the Court; and
3. The confidentiality designation of any materials cannot be used in evidence or as proof of anything.

Pursuant to the parties’ stipulations and Rule 26(c), the following is hereby ORDERED:

1. This Protective Order shall govern all documents, the information contained therein, and all other information produced or disclosed during the Proceeding whether revealed in a document, deposition, other testimony, discovery response or

otherwise, by any party in this Proceeding (“Supplying Party”) to any other party (“Receiving Party”), when the same is designated in accordance with the procedures set forth herein. This Protective Order is binding upon the parties to the Proceeding, including their respective corporate parents, subsidiaries and affiliates and their respective attorneys, agents, representatives, consulting and testifying experts, officers and employees and others as set forth in this Protective Order.

2. A subpoenaed third party who so elects in a writing served on all parties may avail itself of, and agree to be bound by, the terms and conditions of this Protective Order and thereby become a Supplying Party for purposes of this Protective Order. The parties, in conducting discovery from third parties, shall attach to such discovery requests a copy of this Protective Order so as to apprise such third parties of their rights herein. A third party that elects to become a Supplying Party for purposes of this Protective Order shall have the same rights and obligations as any other Supplying Party to designate any “Confidential” or “Outside Attorneys’ Eyes Only” material it produces consistent with the provisions in this Protective Order.

3. Any Supplying Party shall have the right to identify and designate as “Confidential” or “Outside Attorneys’ Eyes Only” any document or other materials it produces or provides (whether pursuant to court order, subpoena or by agreement), or any testimony given in this Proceeding, which testimony or discovery material is believed in good faith by that supplying party to constitute, reflect or disclose its confidential, proprietary, or trade secret information, as those terms are understood under applicable state and federal law (“Designated Material”).

4. Designated Material as used herein includes without limitation documents, information contained in documents, information revealed during a deposition or other testimony, information revealed in an interrogatory answer, or information otherwise revealed during the Proceeding.

5. "Inside Counselors" as used herein refers to no more than two in-house attorneys for each party who are primarily responsible for managing the litigation in this Proceeding. Inside Counselors shall agree not to participate in negotiations of commercial agreements between the parties on behalf of their respective clients during the pendency of this litigation (including appeals) and for two (2) years thereafter. The designated Inside Counselors for each party are as follows:

- (a) For American Airlines, Inc: Bruce Wark and Donald Broadfield, Jr.
- (b) For Travelport Limited and Travelport, LP d/b/a Travelport: Richard Hastings and Shaun Redgrave.
- (c) For Sabre Inc., Sabre Holdings Corp., and Sabre Travel International Limited d/b/a Sabre Travel Network: Sonia Ferguson and David Schwarte.
- (d) For Orbitz Worldwide, LLC d/b/a Orbitz: Craig Sonnenschein and Suzanne Browne.

Any Party may change the designation of its Inside Counselors upon written notice to all other parties if the previously-designated Inside Counselor is no longer employed by the Party or with the Court's permission for good cause shown.

6. Specific documents and interrogatory answers produced by a Supplying Party shall, if appropriate, be designated pursuant to this Protective Order by marking the

first page of the document and each subsequent page thereof containing Confidential Information with the legend:

“CONFIDENTIAL (No. 4:11-cv-00244-Y)”

or

“OUTSIDE ATTORNEYS’ EYES ONLY (No. 4:11-cv-00244-Y)”

Alternatively, a Supplying Party may designate information as Confidential Information by indicating in a writing served to all counsel of record the page range or bates-stamp range or otherwise identifying the materials in a manner that is readily ascertainable.

7. Information disclosed at a deposition taken in connection with this

Proceeding may be designated pursuant to this order as follows:

- (a) A Supplying Party (or its counsel) may designate testimony, given by any fact or expert witness as “Confidential” or “Outside Attorneys’ Eyes Only” on the record during the taking of the deposition, in which case the stenographic employee or court reporter recording or transcribing such testimony shall be directed either to bind any transcript page(s) containing Confidential Information separately and apart from any transcript page(s) containing no such Confidential Information or to ensure that the transcript identifies the page-range of the Confidential Information; or
- (b) A Supplying Party (or its counsel) may notify all other parties to this Protective Order in writing, within twenty-one (21) calendar days of receipt of the transcript of a deposition of any witness of specific pages and lines of the transcript which are designated as “Confidential” or “Outside Attorneys’ Eyes Only,” whereupon each party shall treat the designated excerpts in accordance with this Order. To facilitate the designation of Confidential Information, all transcripts of depositions shall be treated in their entirety as “Outside Attorneys’ Eyes Only” for a period of twenty-one (21) calendar days following delivery by court reporter of certified transcripts to all parties.

8. Confidential Information shall be disclosed by the Receiving Party only to the following persons:

- (a) Outside counsel for the Plaintiff and Defendants whose lawyers have filed appearances in this Proceeding, including their attorneys, paralegals, investigators, stenographic and clerical employees; the personnel supplied by any independent contractor (including litigation support service personnel or attorneys and paralegals assisting in document review) with whom such attorneys work in connection with the Proceeding;
- (b) Inside Counselors, as that term is defined in Paragraph 5 of this Order;
- (c) Any outside consultant or expert who is retained in connection with this Proceeding and to whom it is necessary to disclose Confidential Information for the purpose of assisting in, or consulting with respect to, the preparation of this Proceeding and who signs the document attached hereto as Exhibit A, agreeing to be bound by the terms of this Protective Order;
- (d) The Court and any members of its staff to whom it is necessary to disclose Confidential Information for the purpose of assisting the Court in this Proceeding;
- (e) Witnesses in this action to whom disclosure is reasonably necessary for this litigation and who have signed the document attached as Exhibit A, agreeing to be bound by the terms of this Protective Order;
- (f) Stenographic employees and court reporters recording or transcribing testimony relating to the Proceeding;
- (g) The author, addressees, or recipients of the document, or the original source of the Confidential Information, provided such authors, addressees, or recipients sign the document attached hereto as Exhibit A, agreeing to be bound by the terms of this Protective Order; and
- (h) Any other person to whom the Supplying Party agrees in writing or on the record, provided that such person signs the document attached hereto as Exhibit A, agreeing to be bound by the terms of this Protective Order.

9. Persons having knowledge of Confidential Information by virtue of the disclosure of such information by a Supplying Party in discovery in this Proceeding shall

use that Protected Information only in connection with the prosecution or appeal of the Proceeding, and shall neither use such Confidential Information for any other purpose nor disclose such Confidential Information to any person who is not identified in paragraph 7 of this Protective Order. The parties agree that Confidential Information can be used in any other proceeding between the parties and in which a protective order agreed to by the parties is in place, with the written permission of the Supplying Party, which permission shall not be unreasonably withheld. In the event that permission to use Confidential Information is not given by the Supplying Party, the Receiving Party may petition the Court for relief.

10. Nothing shall prevent disclosure of Confidential Information beyond the terms of this Protective Order (a) if the Supplying Party (or its counsel) consents in writing to such disclosure, (b) if a Supplying Party knowingly discloses its own Confidential Information in a public or non-redacted pleading filed in the Court's public record or in a publication disseminated to the general public, or (c) the Court, after reasonable written notice to counsel for all the parties, and after an opportunity to be heard by counsel for the Supplying Party, orders such disclosure.

11. The Parties expect the Proceeding will require the production (in hard copy and/or electronic form) of certain categories of extremely sensitive confidential trade secret or proprietary information that the Supplying Party reasonably believes may substantially compromise and/or jeopardize the Supplying Party's business interests, even if limited to the persons listed in Paragraph 8 above ("Outside Attorneys' Eyes Only Information"). Outside Attorneys' Eyes Only Information may include without limitation: (a) the negotiation, terms, and course of performance of legal agreements; (b)

pricing information; (c) financial information, including sales and profits, that is not otherwise public information; (d) the content of and strategy related to current and past business dealings, including confidential communications with customers (e) intellectual property; (f) trade secrets, know-how, or proprietary data; (g) information relating to unreleased products and services, or products and services that may still be in development”).

12. All the provisions set forth above applicable to Confidential Information shall apply equally to Outside Attorneys’ Eyes Only Information, except that disclosure of Outside Attorneys’ Eyes Only Information by the receiving party shall be limited to the following persons:

- (a) Outside counsel for the Plaintiff and the Defendants whose lawyers have filed appearances in this Proceeding (specifically excluding in-house counsel), including their attorneys, paralegals, investigators, stenographic and clerical employees; the personnel supplied by any independent contractor (including litigation support service personnel or attorneys and paralegals assisting in document review) with whom such attorneys work in connection with the Proceeding;
- (b) Any outside consultant or expert who retained in connection with this Proceeding and to whom it is necessary to disclose Outside Attorneys’ Eyes Only Information for the purpose of assisting in, or consulting with respect to, the prosecution or defense of this Proceeding, and who signs the document attached hereto as Exhibit A, agreeing to be bound to the terms of this Protective Order;
- (c) The author, addressees, or recipients of the document, or the original source of the Outside Attorneys’ Eyes Only Information who signs the document attached hereto as Exhibit A, agreeing to be bound to the terms of this Protective Order;
- (d) The Court and any members of its staff to whom it is necessary to disclose Outside Attorneys’ Eyes Only Information for the purpose of assisting the Court with respect to the Proceeding;

- (e) Stenographic employees and court reporters recording or transcribing testimony relating to the Proceeding.

13. There may be certain limited pieces of information—documents, interrogatory answers and/or deposition testimony—that are marked “Outside Attorneys’ Eyes Only” by a Supplying Party and that the Receiving Party believes it must show to its clients to adequately prepare its case for trial. If a Receiving Party believes that information falls within this category, it shall identify the information to the Supplying Party with specificity and disclose the in-house personnel to whom it wishes to disclose the information. The Supplying Party will provide a good faith response concerning its willingness (or lack of willingness) to permit the information to be shown to the disclosed in-house personnel within five (5) business days. If the Supplying Party is unwilling to permit the Receiving Party to show the information to the Receiving Party’s clients, the Receiving Party may then raise the matter with the Court.

14. Persons having knowledge of Outside Attorneys’ Eyes Only Information by virtue of the disclosure of such information by a Supplying Party in discovery in this Proceeding shall use that Outside Attorneys’ Eyes Only Information only in connection with the prosecution or appeal of the Proceeding, and shall neither use such Outside Attorneys’ Eyes Only Information for any other purpose nor disclose such Outside Attorneys’ Eyes Only Information to any person who is not identified in paragraph 12 of this Protective Order. The parties agree that Outside Attorneys’ Eyes Only Information can be used in any other proceeding in which a protective order agreed to by the parties is in place, with the written permission of the Supplying Party, which permission shall not

be unreasonably withheld. In the event that permission to use Confidential Information is not given by the Supplying Party, the Receiving Party may petition the Court for relief.

15. Prior to the disclosure of any Designated Material to any person identified in paragraphs 8 (b), (c), (e), (g) or (h) or 12 (b) or (c), such person shall be provided with a copy of this Protective Order, which he or she shall read and upon reading shall sign a Certification, in the form attached hereto as Exhibit A, acknowledging that he or she has read this Protective Order and shall abide by its terms. Counsel for the party seeking to disclose Designated Material to any person identified in paragraphs 8(b) or (g) or 12(c) shall then serve all other parties in this Proceeding with a copy of the executed Certification. Counsel for the party seeking to disclose Designated Material to any person identified in paragraphs 8(e) or (h), or any person identified in paragraphs 8(c) or 12(b) other than the parties' outside economists, shall then serve all other parties in this Proceeding with a copy of the executed Certification and shall refrain from disclosing Designated Material for one business day, during which time the other parties may raise objections. If such an objection is raised, counsel for the party seeking to disclose Designated Material shall not do so until the matter is resolved by the Court. Failure to raise an objection within 24 hours does not waive the right of a party to lodge an objection at a later date and seek relief from the Court. Executed Certifications signed by outside economists shall be maintained by the party retaining them, but need not be served on the other parties. Persons who come into contact with Designated Material for clerical, administrative, paralegal, stenographic or court reporting purposes are not required to execute acknowledgements.

16. All deponents, their counsel and all witnesses to depositions, shall be advised of this Protective Order and its terms on the record at the beginning of all depositions in the Proceeding (such advising not to count against the time limits for such depositions). A deponent shall not be permitted to retain copies of Designated Material unless the deponent is otherwise entitled to receive and retain such copies under the terms of this Protective Order. A deponent's counsel shall not be permitted to retain any copies of Designated Material unless such counsel represents one of the parties in this Proceeding or is otherwise entitled to receive and retain such copies under the terms of this Protective Order. Nothing in this paragraph shall prevent a deponent or deponent's counsel from having reasonable access to the deponent's deposition, including exhibits thereto, for purposes of executing the deposition, preparing to testify further in this Proceeding, or for other purposes agreed to by all the parties.

17. Any party (the "Objecting Party") may challenge the propriety of the designation (or re-designation) of specific material as "Confidential" or "Outside Attorneys' Eyes Only" by serving a written objection that identifies the particular material being challenged (by Bates number or other reasonable description or identification), and provides the basis for the challenge. The Supplying Party or its counsel shall thereafter respond to the objection in writing within five (5) business days of its receipt of such written objection by either (i) agreeing to remove the designation, or (ii) stating the reasons why the designation was made. If the Objecting Party and the Supplying Party are subsequently unable to agree upon the terms and conditions of disclosure for the material(s) at issue, the Objecting Party may file a motion with the Court in order to resolve the disputed designation. Pending the resolution of the

disputed designation, the material(s) at issue shall continue to be treated in accordance with the Supplying Party's designation of the material unless and until differing treatment is directed pursuant to order of the Court.

18. Nothing in this Protective Order shall restrict any party's outside counsel from rendering advice to its clients with respect to this Proceeding and, in the course thereof, relying upon Confidential Information or Outside Attorneys' Eyes Only Information; provided, however, that in rendering such advice, outside counsel shall not disclose any other party's Confidential Information or Outside Attorneys' Eyes Only Information other than in a manner provided for in this Protective Order.

19. Inadvertent production of any document or information without an appropriate designation of confidentiality will not be deemed to waive a later claim as to its confidential nature or stop the Supplying Party from designating said document or information at a later date by complying with the provisions above. Disclosure of said document or information by any party prior to such subsequent designation shall not be deemed a violation of this Protective Order; provided, however, that any party that disclosed the redesignated material shall make a good-faith effort promptly to procure all copies of such redesignated material from any persons known to have possession of any such redesignated material who are no longer entitled to receipt under paragraphs 8 and 12 above.

20. If a Supplying Party inadvertently discloses information that is subject to the attorney-client privilege or the work-product doctrine, such disclosure shall not constitute a waiver of, or an estoppel as to any claim of, such privilege or protection if—upon discovery of such disclosure—the Supplying Party promptly informs the Receiving

Party that the information is subject to a claim of privilege, immunity, or protection. If the Supplying Party notifies the Receiving Party that the information is subject to a claim of privilege, immunity or protection, then counsel for the Receiving Party shall comply with Fed. R. Civ. P. 26(b)(5)(B).

21. Except as agreed in writing by counsel for the Supplying Party, to the extent that any Designated Material is, in whole or in part, contained in, incorporated in, disclosed in or attached to any pleading, motion, memorandum, appendix or other judicial filing, counsel shall file the submission under seal, and the submission shall be designated and treated as a "Sealed Document," in accordance with the Court's order of June 9, 2011. (Doc. 69.) All Sealed Documents, filed under seal pursuant to this Protective Order, shall be electronically filed under seal and shall remain sealed until sixty days after the final disposition of this case in accordance with local rule 79.4. (*See* Doc. 69.) Such Sealed Documents shall be released by the Clerk of the Court only upon further order of the Court, with appropriate notice to all and an opportunity to be heard by all parties to the Proceeding.

22. If Designated Material is used during depositions, it shall not lose its confidential status through such use, and counsel shall exercise their best efforts and take all steps reasonably required to protect its confidentiality during such use.

23. Nothing in this Protective Order shall be deemed a waiver of any objection or privilege a party may claim to the production of any documents, nor shall anything in this Protective Order prevent the parties from seeking an order from the Court, upon proper notice to all parties, further restricting the disclosure of documents or information designated pursuant to this order.

24. Upon the conclusion of the Proceeding, including any appeal related thereto, at the written request and option of the Supplying Party, within thirty (30) calendar days of such request any person or entity having custody or control of Designated Material or of recordings, notes, memoranda, summaries or other written materials, and all copies thereof, relating to or containing Designated Material shall certify that all such Designated Material and any copies thereof, any and all records, notes, memoranda, summaries or other written material regarding the Designated Material have been destroyed or returned to the Supplying Party. Any request for return or destruction shall be made within ninety (90) days of the conclusion of this Proceeding, including all appeals. If a Supplying Party does not request the return of its Designated Material within the specified time period, parties in possession of said material shall destroy the material, and a Clerk of Court in possession of said material may destroy the material consistent with the terms of this Protective Order.

25. To the extent Designated Material is in the possession of outside counsel to a Party at the conclusion of the Proceeding, outside counsel shall make reasonable efforts to destroy all Designated Material, including: (a) destroying all hard copies of documents designated as “Confidential” or “Outside Attorneys’ Eyes Only,”; (b) eliminating any electronic databases that have been created to assist in the prosecution or defense of the Proceeding that hold electronic copies of documents designated as “Confidential” or “Outside Attorneys’ Eyes Only”; and (c) informing all personnel who have worked on the Proceeding that documents designated as “Confidential” or “Outside Attorneys’ Eyes Only” must be automatically destroyed pursuant to outside counsel’s typical document retention policy.

26. If Designated Material is disclosed to any person other than in the manner authorized by this Protective Order, the party responsible for the disclosure shall within two (2) business days after learning of such disclosure, inform the Supplying Party of all pertinent facts relating to such disclosure and shall make every effort to prevent disclosure by each unauthorized person who received such information.

27. If a Receiving Party is served with a discovery request, subpoena or an order issued in other litigation or proceedings that would compel disclosure of any information or items designated in this action as “Confidential” or “Outside Attorneys’ Eyes Only,” the Receiving Party must:

a. Notify in writing, as soon as reasonably practicable, the Supplying Party. Such notification shall include a copy of the subpoena or court order;

b. Notify in writing, as soon as reasonably practicable, the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and

If the Supplying Party timely seeks a protective order, the Receiving Party served with the subpoena or court order shall not produce any information designated in this action as “Confidential” or “Outside Attorneys’ Eyes Only” before a determination by the court from which the subpoena or order issued, unless the Receiving party has obtained the Supplying Party’s permission. The Supplying Party shall bear the burden and expense of seeking protection in that court of its Designated Material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

28. Subject to the applicable rules of evidence, Designated Material may be offered in evidence at trial or any court hearing, provided that the party offering Designated Material (“the Offering Party”) provides reasonable notice to the Supplying Party. Any party or third party may move the Court for an order that evidence, including documents and testimony, be received in camera or under other conditions to prevent unnecessary disclosure of Confidential or Outside Attorneys’ Eyes Only

Information. Prior to trial or to a hearing in open court, the Court may determine what protection, if any, will be afforded to such information at the trial or hearing. In the event the Offering Party cannot practicably provide notice to the Supplying Party, the Offering Party shall, prior to offering in evidence any Designated Material, move the Court for an order that evidence, including documents and testimony, be received in camera or under other conditions to prevent unnecessary disclosure of Confidential or Outside Attorneys' Eyes Only Information.

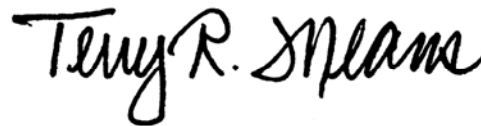
29. The terms of this Protective Order shall be binding upon all current and future parties to this Proceeding and their counsel. If any new party and its counsel should enter this litigation, within five (5) days of the entry of appearance by a new party and its counsel to this Proceeding, Plaintiff shall serve the new party and its counsel with a copy of this Protective Order, and the new party shall be required to sign it or lodge any objections to this Protective Order within three (3) business days after receiving service of the Protective Order.

30. Nothing contained in this Protective Order shall preclude any party from using its own Confidential Information or Outside Attorneys' Eyes Only Information in any manner it sees fit, without prior consent of any party or the Court. If a Supplying Party knowingly discloses its own Confidential Information or Outside Attorneys' Eyes Only Information in a public or non-redacted pleading filed in the Court's public record or in a publication disseminated to the general public, the Supplying Party shall be deemed thereby to have consented to the removal of that designation with respect to the information disclosed.

31. By written agreement of the parties or upon motion and order of the Court the terms of this Protective Order may be amended, modified or vacated.

Unless this order includes a clause that explicitly states that a particular local civil rule is modified as applied to this case, nothing in this order shall be construed to modify the provisions, operation, or effect of any local civil rule of this court.

SIGNED March 20, 2012.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Dated: March 14, 2012

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*Attorneys for Sabre Inc., Sabre Holdings
Corporation, and Sabre Travel Int'l Ltd. d/b/a
Sabre Travel Network*

Exhibit A

AMERICAN AIRLINES, INC.	§	
	§	
VS.	§	CIVIL ACTION NO. 4:11-CV-244-Y
	§	
TRAVELPORT LIMITED, et al.	§	

I hereby certify (i) my understanding that Designated Material and/or Confidential Information and/or Outside Attorneys’ Eyes Only Information are being provided to me pursuant to the terms and restrictions of the Protective Order (the “Order”) entered by the United States District Court for the Northern District of Texas (the “District Court”) in the above-captioned Action, and (ii) that I have read and understood the terms the Order.

I hereby agree to be fully bound by the Order and further agree to submit to the jurisdiction of the District Court for purposes of enforcement of the Order. I certify that I will not use any information disclosed to me under the terms of this Order other than for the purposes described in the Order. I understand that violation of the Order may be punishable by contempt of Court.

Dated: _____

Signature: _____

Printed Name and Title:

Business Address:

COPY

NO. 067-249214-10

AMERICAN AIRLINES, INC.,	§	IN THE JUDICIAL DISTRICT COURT
	§	
v.	§	
	§	OF TARRANT COUNTY, TEXAS
SABRE, INC.,	§	
SABRE HOLDINGS CORPORATION, and	§	
SABRE TRAVEL INTERNATIONAL LTD.	§	67TH JUDICIAL DISTRICT

**SECOND AMENDED CONFIDENTIALITY STIPULATION
AND PROTECTIVE ORDER**

Having determined that certain information to be filed with the Court or produced during discovery by American Airlines, Inc., Sabre Inc., Sabre Holdings, Inc. and/or Sabre Travel International Limited (the “Parties”) or other Persons is “Confidential Information” (as defined in paragraph 1 below) that could be used by competitors to gain a competitive advantage, and the unauthorized disclosure of which would be greatly detrimental to the legitimate commercial or privacy interests of the Parties and Persons and could cause irreparable injury to such Parties and Persons. Therefore, the Court enters the following Stipulation and Order:

1. **Definition of “Confidential Information”:** “Confidential Information” is defined as follows: trade secrets, sensitive business or financial information; confidential research, development or commercial information; and confidential or private personal information the disclosure of which would greatly negatively impact specific, serious and substantial interests of the Party or Person to whom the Confidential Information belongs and would not have any effect on the health or safety of the public.

2. **Scope of Order:** This Confidentiality Stipulation and Protective Order (the “Protective Order”) governs the handling of all documents, testimony and other information, including all copies, excerpts, and summaries thereof, produced, given or filed during discovery and other proceedings in this action, including Confidential Information, produced, given or filed

in this case prior to the date of this Protective Order, either voluntarily or as required by discovery requests made pursuant to the Texas Rules of Civil Procedure.

a. If any person who is a party to another legal proceeding, or a court or an administrative agency, through discovery, demands, subpoenas, or orders production of Confidential Information that has come into possession of a party hereto in this litigation, the party receiving such subpoena or order or demand for such Confidential Information shall promptly, and before producing Confidential Information to such other party, court or administrative agency, notify:

(i) the requesting party, court or administrative agency of this Protective Order, and

(ii) the producing Party or Person of the pendency of such discovery demand, subpoena or order to produce.

The notification to the producing party must be accomplished by email and by certified mail return receipt requested to the counsel whose signature is below at the addresses provided below their signatures. Notification to any non-party must be sent by email and certified mail, return receipt requested, to counsel for the non-party who assisted in the original production of documents or information.

Notification to the producing Party or Person must be accomplished at least five business days prior to the disclosure, or as soon as possible if five business days' notice is rendered impossible through no fault of the possessing party.

3. **Persons Subject to Order:** The provisions of this Protective Order shall apply to the Parties, and any other Person producing or disclosing Confidential Information in this action who agrees or is ordered to be bound by this Protective Order. As used herein, "**Person**"

includes both the Parties and third parties who have agreed or been ordered to be bound by this Protective Order. If, in this action, discovery is sought from third parties that would require such parties to disclose and/or produce Confidential Information, such third parties may gain the protections of this Protective Order by agreeing in writing to produce documents pursuant to this Order and to be bound by it. No further order of this Court shall be necessary to extend the protections of this Order to third parties.

4. **Designation of Confidential Information:** Any Party or Person who produces, gives, or files Confidential Information may designate information as Confidential Information if it meets the definition stated in Paragraph 1. Designation of any documents or information as Confidential Information under this Confidentiality Stipulation and Protective Order shall constitute a representation that such documents or information have been reviewed by an attorney for the producing party or attorney for the party to this Confidentiality Stipulation and Protective Order who so designated the documents or information; that there is a valid, good faith basis for such designation, and that no less restrictive means will adequately and effectively protect the party's interests.

a. **Designation of Documents:** Documents may be designated as Confidential Information by stamping "Confidential" (or some other similar legend) on each page prior to production. It is further agreed and stipulated that the courtesy copy of the Brief in Opposition to American Airlines, Inc.'s Application for Temporary Restraining Order and Temporary Injunction submitted to the Court by the Sabre parties on January 10, 2011 shall be returned to the Sabre parties so that it may be marked to conform with this Order and resubmitted in accordance with this Order. It is further agreed and stipulated that American will move to resubmit its Amended Original Petition and Application for Temporary Restraining

Order and Temporary Injunction and the accompany affidavit and exhibits that were filed with the Court by American on January 10, 2011 so that it may be marked to conform with this Order and re-submitted in accordance with this Order.

b. **Increased levels of protection.** If a Party or Person that in good faith believes any particular Confidential Information is so highly sensitive that it should not be disclosed to an individual plaintiff or defendant, or to a director, officer, or employee thereof, the party may designate that Confidential Information as “Confidential—Outside Counsel Only” or “Highly Confidential.” Information that is designated “Confidential,” “Confidential—Outside Counsel Only,” or “Highly Confidential” shall be used by the Parties or Persons solely as described below.

c. **Redaction of Documents:** In addition to designating documents as Confidential Information, the Parties or Persons may redact highly sensitive material from documents, including information that if disclosed would invade a specific individual’s privacy, as long as counsel reasonably believes the redacted portions are not relevant to any issues in this case and do not significantly hinder the opposing party from utilizing the relevant portions of the document. Disputes over redactions will be handled in the same manner as that for confidentiality designations.

d. **Designation of Deposition Testimony:** Deposition testimony may be designated, in whole or in part, as Confidential Information by (1) oral designation of same on the record; or (2) by written designation made and served on all Parties within 30 days after the court reporter issues the final transcript. Until the expiration of that 30-day period, the entire deposition transcript and all exhibits shall be treated as “Highly Confidential.” If Confidential Information previously produced and designated by a non-party is the subject of deposition

testimony or is attached thereto as an exhibit, that portion of testimony related to the Confidential Information and any such Confidential Information shall automatically retain the original designation as “Confidential,” “Confidential—Outside Counsel Only” or “Highly Confidential,” as the case may be, without any additional action by the original designating non-party. Moreover, the non-party shall be notified by the Party that noticed the deposition within five business days after the testimony in question of the fact that the non-party’s Confidential Information was used or discussed at the deposition, and upon request by the non-party, shall be provided to the non-party a copy of the relevant portions of the transcript and related documents (appropriately redacted to shield any Confidential Information of other Persons or Parties). After making any designations of all or part of the transcript as Confidential Information, the information will remain so designated unless the procedures set forth herein for designation disputes are followed. Upon designation of confidentiality, the Court Reporter shall separately bind the “Confidential,” “Confidential—Outside Counsel Only,” and “Highly Confidential” portions of the deposition transcript and shall stamp the words “Confidential,” “Confidential—Outside Counsel Only,” or “Highly Confidential” as appropriate, on each page.

e. **Subsequent Designation:** Documents, deposition transcripts, and other information may be designated as “Confidential,” “Confidential—Outside Counsel Only,” or “Highly Confidential” pursuant to the above subparagraphs after they have been produced without having been so designated only under the following conditions:

- (i) Persons to whom such documents, testimony, or other information, have been disclosed must be advised in writing of the new designation;
- (ii) The new designation applies only as of the date and time of receipt of notice of the new designation by each person notified;

(iii) Persons to whom such documents, testimony, or other information have been disclosed shall not be responsible for any disclosure to third parties occurring before receipt of notice described in Paragraph 4(e)(i); and

(iv) Persons to whom such documents, testimony, or other information have been disclosed must be provided with another copy of the documents, deposition testimony, or other information that bears the proper designation.

f. **Inadvertent Disclosure:** The inadvertent disclosure of Confidential Information by a producing party without designation at the time of disclosure shall not be treated as a waiver of the confidentiality of the subject matter, nor as a waiver as to the specific information except as described above. A receiving party that has inadvertently disclosed Confidential Information to a person or entity not entitled to receive such Confidential Information must immediately provide written notice by email and certified mail, return receipt requested, to the Person who originally produced the Confidential Information, and provide all details concerning the inadvertent disclosure, including what has been disclosed, to whom, when, under what circumstances, and all steps taken to minimize additional damage and to protect against further dissemination.

g. **Inspected Documents:** If documents are inspected, as opposed to copied, all such documents shall be presumed at such inspection to have been designated as Confidential Information by the producing party until such time as the producing party provides copies to the receiving party.

5. **Use Limitations:** All Confidential Information that is produced in the course of discovery proceedings herein shall be used only for the purpose of preparing for and conducting this action (including appeals) and not for any business or other purpose whatsoever, and shall

not be given, shown, or made available or communicated in any way to anyone except those specified below who have read and are bound by the terms of this Protective Order, and to whom it is necessary that such Confidential Information be given or shown for the purposes permitted under this paragraph. Indeed, the parties and other persons bound by this Protective Order

acknowledge and agree that the misuse and unauthorized disclosure of Confidential Information will result in material harm to the producing party. Thus, the persons to whom Confidential Information is disclosed shall, before such disclosure, agree to be bound by this Protective Order by signing a copy of the acknowledgment form attached as Exhibit A and be advised that the violation of the terms of this Protective Order (by use of the Confidential Information for business purposes or in any other impermissible manner) may constitute contempt of Court, or form the basis for other claims.

6. **Persons To Whom Confidential Information May be Disclosed:**

a. **“Confidential” Information:** Except as otherwise provided by this Protective Order, information designated as “Confidential” shall be disclosed only to:

(i) Outside counsel of record for the Parties, and other attorneys, clerical, paralegal and other staff employed by outside counsel and any Independent Experts (as defined and subject to the terms provided below) who are assisting outside counsel in the prosecution or defense of this action and who are not current employees of a party;

(ii) inside counsel for the Parties;

(iii) such officers, directors, or employees of the Parties, as counsel, in good faith, requires to provide assistance in the prosecution or defense of this action, and for no other purpose;

(iv) the Court (in the manner provided by paragraphs 8 and 9 hereof) and court personnel;

(v) any other Person as to whom the producing Person agrees in writing;

(vi) witnesses where such witness is employed by the party making the designation at deposition, trial, and other evidentiary hearings or similar proceedings; and

(vii) court reporters or other outside contractors such as document management personnel employed in connection with this action.

b. **“Confidential—Outside Counsel Only” Information:** Except as otherwise provided by this Protective Order, information designated as “Confidential—Outside Counsel Only” shall be disclosed only to Persons described in paragraph 6(a)(i), (iv), (v), (vi) and (vii) above who have agreed or who have been ordered to be bound by this Protective Order. In addition, “Confidential—Outside Counsel Only” information may also be disclosed to one in-house attorney for each party. Specifically, “Confidential—Outside Counsel Only” information may be disclosed to Camille Penniman for Sabre and Don Broadfield for American, each of whom shall use this information solely for purposes of this litigation and not for any business purpose whatsoever and each of whom agrees not to participate in any future contract negotiations between the parties relating to any amendments to the Participating Carrier Agreement. Furthermore, these in-house attorneys shall not disclose “Confidential-Outside Counsel Only” information to other officers, directors, or current or future employees of the Party they represent.

c. **“Highly Confidential” Information:** Except as otherwise provided by this Protective Order, information designated as “Highly Confidential” shall be disclosed only to

Persons described in paragraph 6(a)(i), (iv), (v), (vi) and (vii) above who have agreed or who have been ordered to be bound by this Protective Order.

d. **Disclosure to Independent Experts:** The term "Independent Expert" for a party shall be defined as any person (1) with whom counsel for a Party may deem it necessary to consult concerning technical, financial, or other aspects of this case for the preparation of trial thereof; (2) who is not a current or past employee of any Party; (3) who have not worked or will not work in the foreseeable future with a Party on business matters, and (4) who has been cleared to receive Confidential Information pursuant to this Paragraph. No Independent Expert may be shown any Confidential Information until such person reads this Protective Order and agrees to be bound by its terms by signing the form attached hereto as Exhibit A.

e. **Disclosure of Confidential Transcripts to the Deponent:** Deposition transcripts containing Confidential Information may be shown to the deponent for the purpose of correction, but the deponent may not retain a copy of the transcript unless the deponent agrees to be bound by this Protective Order by signing a copy of the acknowledgment form.

f. **Limited Exceptions:**

(i) **Authors/Addressees:** This Protective Order shall not apply to the disclosure of documents, or the contents thereof, to persons who were the authors or addressees of those documents or who are shown on the face of the document as having received copies.

(ii) **Witnesses:** If a document designated as Confidential Information refers with particularity to a potential witness, the Parties' attorneys may show only the relevant portion of that document to the potential witness in preparing that witness for his or her testimony. If a document designated as Confidential Information refers generally

to a potential witness, the Parties' attorneys may discuss generally the relevant content of the document without revealing the details of the document or showing the document to the potential witness. If a party reveals Confidential Information of a non-party to a potential witness under this paragraph, that fact must be disclosed in writing by email and certified mail, return receipt requested, to counsel for the non-party that originally designated the Confidential Information as soon as practicable in advance of the expected testimony, but no later than five business days after such disclosure. A person is considered to be a "potential witness" if that person is listed by at least one party as a person with knowledge of relevant facts, has been the subject of a pending deposition notice or request, or is reasonably expected to testify at a hearing scheduled by the Court or at trial.

(iii) **Certain Information Not Subject to Scope of Order:** The restrictions of this Protective Order shall not apply to information which (a) was, is, or becomes public knowledge, not in violation of this Protective Order, or (b) was or is acquired from a third party possessing such information and having no obligation of confidentiality to the designating party, or (c) the receiving party can establish that the information is in its rightful and lawful possession at the time of disclosure or is developed independently by the receiving party without the use of Confidential Information.

7. **Court Filings and Procedures:** For applications and motions to the Court in which a party submits Confidential Information:

a. All documents containing "Confidential," "Confidential—Outside Counsel Only," or "Highly Confidential" information which are submitted to the Court shall be

filed with the Court in sealed envelopes or other appropriate sealed containers on which shall be endorsed the title of the action to which it pertains, an indication of the nature of the contents of the sealed envelope or other container, the word "CONFIDENTIAL" and a statement substantially in the following form:

This envelope is filed under seal pursuant to a protective order of the Court dated _____, 2012 governing confidentiality of documents and information obtained during the course of this litigation. This envelope contains Confidential Information, and is not to be opened or the contents revealed except by authorized Court personnel.

No separate motion shall be required to file Confidential Information under seal.

b. Any Court hearing that refers to or describes "Confidential," "Confidential Outside Counsel Only," or "Highly Confidential" information shall, at the Court's discretion, be held *in camera* or otherwise held in compliance with the applicable level of confidentiality, including clearing the courtroom of business personnel, employees of parties, or the public.

c. Notwithstanding the above, any party may apply to the Court for an order allowing the filing of papers containing Confidential Information, if that party believes the filing of the papers is necessary for a complete record. Any such papers shall be placed by the submitting party in a sealed envelope labeled as set forth above. Any papers filed under seal with the Court remain sealed upon dismissal or final judgment in this action and shall not be unsealed unless the Court orders otherwise. If a Party seeks to file Confidential Information originally designated by a non-party, that Party will provide advance written notice to the original producing non-party identifying specifically what is expected to be filed, and the anticipated date of filing. If the Party is unable to provide advance notice, then it must provide the original producing non-party with notice within five business days after the filing has been completed.

d. Any document or transcript designated as “Confidential Pursuant to Court Order” or “Confidential,” “Confidential—Outside Counsel Only,” or “Highly Confidential” that is lodged or filed with the Court shall be maintained under seal by the Clerk and shall be made available only to the Court and to counsel for the Parties, until further order of this Court.

8. **Resolution of Disputes:** Whenever a party objects to the treatment of a document or transcript as “Confidential,” “Confidential—Outside Counsel Only,” or “Highly Confidential” as defined herein, it shall, in writing, so inform the party seeking the confidential treatment. The party objecting to such treatment may thereafter, upon at least five (5) days’ written notice (or one days’ notice if for an evidentiary hearing to be held within two weeks from the date of the production), apply to the Court by motion for a ruling that the document or transcript at issue should not be treated as “Confidential,” “Confidential Outside Counsel Only,” or “Highly Confidential.” Such a motion shall be made within a reasonable period of time, after notice of the objection to a “Confidential,” “Confidential Outside Counsel Only,” or “Highly Confidential” designation is given. The designating party shall have the burden of proving the information is confidential. The prevailing party upon such motion shall be entitled to recover reasonable attorneys’ fees and costs unless the Court shall determine that the opposition was substantially justified. Until the Court enters an Order, if any, changing the designation of the document or transcript that is to be the subject of the application, it shall be afforded the treatment described herein for its designation.


9. **Conclusion of Litigation:** At the conclusion of this litigation (or upon its final adjudication after all appeals are exhausted), all copies of all documents or transcripts designated “Confidential,” “Confidential—Outside Counsel Only,” or “Highly Confidential” and any copies thereof shall either be destroyed or returned to the party or person furnishing the same at the

designation of the producing party. In addition, all copies of summaries or other materials containing or disclosing information contained in "Confidential," "Confidential—Outside Counsel Only," or "Highly Confidential" documents or manuscripts shall be either destroyed or returned to the party or person furnishing the same at the designation of the producing party. In the event that a party chooses destruction of documents, summaries, transcripts, or other materials in accordance with this Section 9, prompt, written notice shall be given to the party or person originally furnishing the documents, summaries, transcripts, or other materials certifying to the furnishing party or person that the destruction has been completed. This Order shall continue to be binding after the conclusion of this litigation. The Court shall conduct a Rule 76a hearing on September 24, 2012, or at another date set by the Court, to determine issues concerning the permanent sealing or destruction of documents used as exhibits and/or offered into evidence.

Based on the foregoing stipulation, and good cause appearing therefore, the Court approves this Second Amended Confidentiality Stipulation and Protective Order governing the protection and exchange of documents and confidential material.

SO ORDERED.

DATED: this 25th day of April, 2012.



DONALD J. COSBY
JUDGE PRESIDING

EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT
TO BE BOUND BY PROTECTIVE ORDER**

I _____, declare under penalty of perjury that I have read in its entirety the Protective Order entered in the lawsuit captioned *American Airlines, Inc. v. Sabre Inc., Sabre Holdings Corporation, and Sabre Travel International Limited*, No. 067-249214-10, in the 67th Judicial District Court of Tarrant County, Texas, and I agree to be bound by its terms.

DATED: _____

BY: _____

Falls, Craig

From: Fusco, Sandra [Sandra.Fusco@weil.com]
Sent: Wednesday, June 27, 2012 9:19 AM
To: Pentz, Justin; Garcia, Yolanda; Steven J. Kaiser (skaiser@cgsh.com); 'Larry C. Work-Dembowski' (lwork-dembowski@cgsh.com); Feeney, Carolyn; EXT brendan.mcshane@lw.com; Jason.Daniels@lw.com
Cc: Pace, Christopher; Weiner, Michael; Falls, Craig
Subject: RE: Proposed revision to federal protective order

Justin,

We believe the change we have requested below is necessary because the current language does not explicitly provide what was intended, i.e., signatories to the order are not prevented from disclosing information that the Receiving Party (1) acquired from a third-party with no obligation to the designating party or (2) that the Receiving Party already had in its possession or developed independently without the use of Confidential information. The procedure of requiring the Receiving Party to go before the Court or obtain consent from the Supplying Party when either case is involved imposes a needless and undue burden, particularly on non-parties such as experts. Moreover, paragraph 30 addresses a “party’s” right to use its Confidential Information in any manner it sees fit, but does not appear to provide the same protections to other signatories to the protective order, which makes the changes we have proposed all the more sensible and important to enact. Therefore, we believe that the protective order as written is overbroad (particularly as to experts and other non-parties) and request the modification proposed below. We hope that you and the other parties will agree to this minor change, but will be forced to seek relief from the Court if you do not.

Sincerely,



Sandra Fusco

Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
Dallas, TX 75201-6950
sandra.fusco@weil.com
+1 214 746 8101 Direct
+1 214 746 7777 Fax

From: Pentz, Justin [mailto:justin.pentz@dechert.com]
Sent: Monday, June 25, 2012 9:59 PM
To: Garcia, Yolanda; Steven J. Kaiser (skaiser@cgsh.com); 'Larry C. Work-Dembowski' (lwork-dembowski@cgsh.com); Feeney, Carolyn; Brendan.McShane@lw.com; Jason.Daniels@lw.com
Cc: Fusco, Sandra; Pace, Christopher; Weiner, Michael; Falls, Craig
Subject: RE: Proposed revision to federal protective order

Yolanda,

We do not understand why it is necessary to make the revision you propose below to the First Amended Stipulated Protective Order entered by the Court on March 20, 2012. Paragraph 10 of that order appropriately provides that disclosure of Travelport’s Confidential Information or Outside Attorneys’ Eyes Only Information requires either Travelport’s consent or a court order. If American has a basis for challenging a particular designation, then paragraph 17 sets forth the appropriate procedure to be followed. And paragraph 30 of the protective order expressly states that: “Nothing contained in this Protective Order shall preclude any party from using its own Confidential Information or Outside Attorneys’ Eyes Only Information in any manner it sees fit, without prior consent of any party or the Court.”

We are happy to discuss these issues further if you wish, but absent further explanation as to why AA's proposed modification to the protective order is necessary or desirable, Travelport opposes the proposed modification.

Justin N. Pentz
Dechert LLP
+1 215 994 2395 Direct
+1 215 655 2395 Fax
justin.pentz@dechert.com
www.dechert.com

From: Garcia, Yolanda [<mailto:yolanda.garcia@weil.com>]
Sent: Monday, June 18, 2012 12:49 PM
To: Steven J. Kaiser (skaiser@cgsh.com); 'Larry C. Work-Dembowski' (lwork-dembowski@cgsh.com); Feeney, Carolyn; Pentz, Justin; EXT brendan.mcshane@lw.com; Jason.Daniels@lw.com
Cc: Fusco, Sandra; Pace, Christopher
Subject: FW: Proposed revision to federal protective order

All:

American would like to propose a small revision to the federal protective order to make it match the state protective order, while not changing the substantive obligations of the parties. The change is to paragraph 10 and is pasted below.

Nothing shall prevent disclosure of Confidential Information beyond the terms of this Protective Order (a) if the Supplying Party (or its counsel) consents in writing to such disclosure, (b) if a Supplying Party knowingly discloses its own Confidential Information in a public or non-redacted pleading filed in the Court's public record or in a publication disseminated to the general public, ~~or~~ (c) if the Court, after reasonable written notice to counsel for all the parties, and after an opportunity to be heard by counsel for the Supplying Party, orders such disclosure, (d) if the Confidential Information was or is acquired from a third party possessing such information and having no obligation of confidentiality to the designating party, or (e) if the Receiving Party can establish that the Confidential Information is in its rightful and lawful possession at the time of disclosure or is developed independently by the Receiving Party without the use of Confidential Information.

I've attached a redline for your review as well. Please let me know if this change is acceptable.

Yolanda

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, postmaster@weil.com, and destroy the original message. Thank you.

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

Falls, Craig

From: Fusco, Sandra [Sandra.Fusco@weil.com]
Sent: Friday, June 29, 2012 5:15 PM
To: Pentz, Justin; Garcia, Yolanda; Steven J. Kaiser (skaiser@cgsh.com); 'Larry C. Work-Dembowski' (lwork-dembowski@cgsh.com); Feeney, Carolyn; EXT brendan.mcshane@lw.com; Jason.Daniels@lw.com
Cc: Pace, Christopher; Weiner, Michael; Falls, Craig
Subject: RE: Proposed revision to federal protective order
Attachments: Redline - 44042398-v1 and 44042398-v2.docx; 44042398-v2.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Counsel,

We have not heard back from you on American's proposed modification to the federal Protective Order. Mr. Myers, American's testifying expert, upon reading the Federal Protective Order before executing it, became concerned that the Federal Protective Order does not contain the same language as the state protective order explicitly stating what is plainly implied - that information independently obtained is not covered by the various prohibitions in the protective order. We ask that you agree to this simple revision that we have proposed, which mirrors the language of the state protective order. If we don't hear from you by Monday at 11 am Central, we will be forced to seek the Court's assistance to make what we believe is a minor and straight-forward modification.

Sincerely,

The logo for the law firm Weil, consisting of the word "Weil" in white text on a green rectangular background.

Sandra Fusco

Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
Dallas, TX 75201-6950
sandra.fusco@weil.com
+1 214 746 8101 Direct
+1 214 746 7777 Fax

From: Fusco, Sandra
Sent: Wednesday, June 27, 2012 8:19 AM
To: 'Pentz, Justin'; Garcia, Yolanda; Steven J. Kaiser (skaiser@cgsh.com); 'Larry C. Work-Dembowski' (lwork-dembowski@cgsh.com); Feeney, Carolyn; Brendan.McShane@lw.com; Jason.Daniels@lw.com
Cc: Pace, Christopher; Weiner, Michael; Falls, Craig
Subject: RE: Proposed revision to federal protective order

Justin,

We believe the change we have requested below is necessary because the current language does not explicitly provide what was intended, i.e., signatories to the order are not prevented from disclosing information that the Receiving Party (1) acquired from a third-party with no obligation to the designating party or (2) that the Receiving Party already had in its possession or developed independently without the use of Confidential information. The procedure of requiring the Receiving Party to go before the Court or obtain consent from the Supplying Party when either case is involved imposes a needless and undue burden, particularly on non-parties such as experts. Moreover, paragraph 30 addresses a

“party’s” right to use its Confidential Information in any manner it sees fit, but does not appear to provide the same protections to other signatories to the protective order, which makes the changes we have proposed all the more sensible and important to enact. Therefore, we believe that the protective order as written is overbroad (particularly as to experts and other non-parties) and request the modification proposed below. We hope that you and the other parties will agree to this minor change, but will be forced to seek relief from the Court if you do not.

Sincerely,



Sandra Fusco

Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
Dallas, TX 75201-6950
sandra.fusco@weil.com
+1 214 746 8101 Direct
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From: Pentz, Justin [<mailto:justin.pentz@dechert.com>]
Sent: Monday, June 25, 2012 9:59 PM
To: Garcia, Yolanda; Steven J. Kaiser (skaiser@cgsh.com); 'Larry C. Work-Dembowski' (lwork-dembowski@cgsh.com); Feeney, Carolyn; Brendan.McShane@lw.com; Jason.Daniels@lw.com
Cc: Fusco, Sandra; Pace, Christopher; Weiner, Michael; Falls, Craig
Subject: RE: Proposed revision to federal protective order

Yolanda,

We do not understand why it is necessary to make the revision you propose below to the First Amended Stipulated Protective Order entered by the Court on March 20, 2012. Paragraph 10 of that order appropriately provides that disclosure of Travelport’s Confidential Information or Outside Attorneys’ Eyes Only Information requires either Travelport’s consent or a court order. If American has a basis for challenging a particular designation, then paragraph 17 sets forth the appropriate procedure to be followed. And paragraph 30 of the protective order expressly states that: “Nothing contained in this Protective Order shall preclude any party from using its own Confidential Information or Outside Attorneys’ Eyes Only Information in any manner it sees fit, without prior consent of any party or the Court.”

We are happy to discuss these issues further if you wish, but absent further explanation as to why AA’s proposed modification to the protective order is necessary or desirable, Travelport opposes the proposed modification.

Justin N. Pentz
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From: Garcia, Yolanda [<mailto:yolanda.garcia@weil.com>]
Sent: Monday, June 18, 2012 12:49 PM
To: Steven J. Kaiser (skaiser@cgsh.com); 'Larry C. Work-Dembowski' (lwork-dembowski@cgsh.com); Feeney, Carolyn; Pentz, Justin; EXT brendan.mcshane@lw.com; Jason.Daniels@lw.com
Cc: Fusco, Sandra; Pace, Christopher
Subject: FW: Proposed revision to federal protective order

All:

American would like to propose a small revision to the federal protective order to make it match the state protective order, while not changing the substantive obligations of the parties. The change is to paragraph 10 and is pasted below.

Nothing shall prevent disclosure of Confidential Information beyond the terms of this Protective Order (a) if the Supplying Party (or its counsel) consents in writing to such disclosure, (b) if a Supplying Party knowingly discloses its own Confidential Information in a public or non-redacted pleading filed in the Court's public record or in a publication disseminated to the general public, ~~or~~(c) if the Court, after reasonable written notice to counsel for all the parties, and after an opportunity to be heard by counsel for the Supplying Party, orders such disclosure-, (d) if the Confidential Information was or is acquired from a third party possessing such information and having no obligation of confidentiality to the designating party, or (e) if the Receiving Party can establish that the Confidential Information is in its rightful and lawful possession at the time of disclosure or is developed independently by the Receiving Party without the use of Confidential Information.

I've attached a redline for your review as well. Please let me know if this change is acceptable.

Yolanda

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Falls, Craig

From: Fusco, Sandra [Sandra.Fusco@weil.com]
Sent: Friday, June 29, 2012 7:15 PM
To: Pentz, Justin; Feeney, Carolyn; Weiner, Michael; Falls, Craig
Cc: Pace, Christopher; Garcia, Yolanda
Subject: Federal Protective Order- disclosure

Counsel,

In preparing for the Federal expert report deadline, American realized that its expert, Monty Myers, had not yet executed the Federal Protective Order. Fortunately, nearly all documents Mr. Myers had reviewed were covered by the state protective order. However, he did review a few Travelport documents that apparently have not yet been deemed produced in the state case. Specifically, Mr. Myers reviewed Travelport's responses to American's Second Set of Interrogatories, Scott Hyden's deposition transcript, and Travis Christ's deposition transcript. If you have any questions, then please let us know.

Sincerely,
Sandy


Sandra Fusco

Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
Dallas, TX 75201-6950
sandra.fusco@weil.com
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Falls, Craig

From: Feeney, Carolyn
Sent: Monday, July 02, 2012 10:24 AM
To: Fusco, Sandra; Pentz, Justin; Weiner, Michael; Falls, Craig
Cc: Pace, Christopher; Garcia, Yolanda
Subject: RE: Federal Protective Order- disclosure

Sandy

American's flagrant violation of the protective order is a very serious matter, and it raises several concerns:

- First, how long has American known about this situation, and why was it not brought to our attention earlier?
- Second, has Mr. Myers further disseminated Travelport's confidential or outside attorneys' only information to anyone who is not entitled to access such information under the express terms of the federal protective order?
- Third, it appears from your emails that Mr. Myers still has not signed an Exhibit A nor otherwise agreed to be bound by the protective order. Why not? Under the circumstances, his retention and use of any Travelport confidential or outside attorneys' only information for purposes of this case is a continuing violation of the protective order that must be remedied immediately.
- Fourth, you suggest but do not expressly state that Mr. Myers signed an Exhibit A to the protective order in the Tarrant County case. Please confirm that he has done so.
- Fifth, your email suggests that American believes that Mr. Myers' use of Travelport confidential material covered by the Tarrant County protective order to prepare an expert report in the federal case is permitted. It is not. The Tarrant County protective order governs the use of confidential material in the Tarrant County case between American and Sabre. The federal protective order governs the use of Travelport's confidential information, including outside attorneys' only information, in this matter. Therefore, the fact that Mr. Myers may have signed an Exhibit A to the protective order in the Tarrant County case does not authorize him to use Travelport's confidential or outside attorneys' only information for purposes of this case. See Paragraph 5 of the Second Amended Confidentiality Stipulation and Protective Order in the Tarrant County case.

As for your request to amend paragraph 10 of the federal protective order – a request that it now appears was motivated by your violation of that protective order – we cannot consent. First, your suggested modifications to paragraph 10 are unnecessary. Your proposed clause (d) would allow the disclosure of "Confidential Information that was or is acquired from a third party possessing such information and having no obligation of confidentiality to the designating party," and proposed clause (e) would allow the disclosure of Confidential Information "if the Receiving Party can establish that the Confidential Information is in its rightful and lawful possession at the time of disclosure or is developed independently by the Receiving Party without the use of Confidential Information." If your suggestion is that the possession of the information by a third party or the Receiving Party somehow makes the Designating Party's designation inappropriate, the Receiving Party already has the ability to challenge the designation under paragraph 17.

Second, your proposed modifications are potentially harmful. Your proposed clause (d) would allow disclosure of confidential information even if the third party has no lawful right to possess the confidential information. For example, proposed clause (d) would authorize the disclosure of Travelport's confidential information even if obtained from a thief. Your proposed clause (e) is equally problematic. Who decides whether the Receiving Party has established that a particular piece of confidential information is in the Receiving Party's rightful and lawful possession and/or was developed independently without the use of Confidential Information? That assessment must be made by the Designating Party or the Court, and thus clauses (a) and (c) of the existing protective order already address the issue.

Third, we do not understand how any of these changes, even if applied retroactively, would cure American's violations of the protective order with respect to Mr. Myers. Surely, American is not suggesting that it developed independently, without the use of Confidential Information, Travelport's interrogatory responses, or the deposition testimony of Travelport witnesses? Is American suggesting that it was in the lawful possession of Travelport's confidential information at the time of disclosure to Mr. Myers because that information had been deemed produced to American in Tarrant County? If so, the entire federal case protective order would be rendered meaningless. And there is still the separate matter of American's violation of the use restriction in the Tarrant County protective order. The possibility of this kind of abuse is exactly why American's proposed changes to the protective order are so problematic.

Please respond to the questions and concerns identified above no later than the close of business on Monday, July 2.

Regards,
Carrie

From: Fusco, Sandra [mailto:Sandra.Fusco@weil.com]
Sent: Friday, June 29, 2012 7:46 PM
To: Pentz, Justin; Feeney, Carolyn; Weiner, Michael; Falls, Craig
Cc: Pace, Christopher; Garcia, Yolanda
Subject: RE: Federal Protective Order- disclosure

I neglected to add that Mr. Myers no longer has access to this information until this issue is resolved.

Sincerely,
Sandy



Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
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From: Fusco, Sandra
Sent: Friday, June 29, 2012 6:15 PM
To: 'Pentz, Justin'; 'Feeney, Carolyn'; 'Weiner, Michael'; 'Falls, Craig'
Cc: Pace, Christopher; Garcia, Yolanda
Subject: Federal Protective Order- disclosure

Counsel,

In preparing for the Federal expert report deadline, American realized that its expert, Monty Myers, had not yet executed the Federal Protective Order. Fortunately, nearly all documents Mr. Myers had reviewed were covered by the state protective order. However, he did review a few Travelport documents that apparently have not yet been deemed produced in the state case. Specifically, Mr. Myers reviewed Travelport's responses to American's Second Set of Interrogatories, Scott Hyden's deposition transcript, and Travis Christ's deposition transcript. If you have any questions, then please let us know.

Sincerely,
Sandy



Sandra Fusco

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Falls, Craig

From: Fusco, Sandra [Sandra.Fusco@weil.com]
Sent: Monday, July 02, 2012 11:19 PM
To: Feeney, Carolyn; Pentz, Justin; Weiner, Michael; Falls, Craig
Cc: Pace, Christopher; Garcia, Yolanda
Subject: Federal Protective Order- disclosure

Carrie-

The amendment suggested by American is straightforward and quite common. Indeed, Sabre agreed to essentially the same language in the state litigation and Travelport invoked that protective order for nearly its entire federal production. Travelport's outright refusal to consent or even consider the proposal is part and parcel of its pattern of hardball litigation tactics leading to needless motion practice. Moreover, Travelport's response is pure gamesmanship, particularly given Travelport's prior request to amend the Federal Protective Order to ensure that it did not need to disclose its experts before the disclosure deadline and counsel's statements to American that the amendment would benefit only Travelport in view of the state protective order and Travelport's production in the state case.

As for Travelport's concerns, they are unfounded because neither Mr. Myers nor anyone assisting him has disseminated any party's confidential or outside attorneys' only information to anyone who is not entitled to access such information under the express terms of the federal protective order. Moreover, Mr. Myers will agree to be bound by the Federal Protective Order going forward, subject to the proposed modifications. In any event, until recently, American had mistakenly believed that Mr. Myers had executed the Federal Protective Order. From Mr. Myers' perspective, he was until recently focused on the Tarrant County case, in which he had properly executed the exhibit to the Protective Order last year. Moreover, he had understood that the material in his possession was subject to the Protective Order in the Tarrant County case (which was in fact the case as to almost all documents he had received). When we realized that Exhibit A of the Federal Protective Order had not been signed, we took steps to ensure compliance with the Federal Protective Order and American presently is in compliance with it.

In sum, Travelport's arguments against the proposed clarifying amendment are clearly unfounded. The amendment simply excludes from the strictures of the protective order that which is already implicitly excluded, i.e., information independently and lawfully obtained by the recipient. We hope that Travelport will reconsider its opposition to avoid needless motion practice.

Sincerely,
Sandy

The logo for the law firm Weil, featuring the word "Weil" in white text on a green rectangular background.

Sandra Fusco

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Falls, Craig

From: Falls, Craig
Sent: Monday, July 09, 2012 7:04 PM
To: 'Fusco, Sandra'; 'christopher.pace@weil.com'; Garcia, Yolanda
Cc: Weiner, Michael; Feeney, Carolyn; Pentz, Justin
Subject: AA's Emergency Motion to Amend the Protective Order

Sandy,

Your motion to amend the Protective Order [Doc. 363] states that you seek clarification that the Protective Order “does not restrict the disclosure or use of information already known to, or independently obtained by, a recipient of material designated under the Protective Order.” We do not believe that this needs to be clarified, as it is already explicit in the Protective Order that a Supplying Party can only designate as Confidential or Outside Attorneys’ Eyes Only materials the Supplying Party produces (See paragraphs 3, 6, 11), and as you note in your brief, the use restrictions of paragraphs 9 and 14 apply to information that is known to the Receiving Party *by virtue of disclosure by the Supplying Party*, and the disclosure provisions of paragraphs 8, 12, and 15 all relate to “Confidential Information,” “Outside Attorneys’ Eyes Only Information” and “Designated Materials,” each of which refer to information that a Supplying Party produces or provides, not information that the Receiving Party acquires from means other than a Supplying Party.

We continue to believe that AA’s proposed edits to Paragraph 10 are problematic because Paragraph 10 does not address a Receiving Party’s ability to disclose its own information. Rather, it addresses a Receiving Party’s ability to disclose ‘Confidential Information’ (or by operation of Paragraph 12, “Outside Attorneys’ Eyes Only Information”) that a Supplying Party produced, and notwithstanding the Supplying Party’s designations. If your intent is to clarify the Receiving Party’s ability to use its own information, Paragraph 10 is not the appropriate vehicle for that.

In the interests of resolving this dispute, Travelport offers that, in lieu of your proposed revisions to Paragraph 10, that Paragraph 30 be amended as follows.

30. Nothing contained in this Protective Order shall preclude any party from using its own Confidential Information or Outside Attorneys’ Eyes Only Information in any manner it sees fit, without prior consent of any party or the Court. *Information that a Receiving Party acquired or acquires through means other than through disclosure of Confidential Information or Outside Attorneys’ Eyes Only Information by a Supplying Party does not become Confidential Information or Outside Attorneys’ Eyes Only Information for the purposes of this Protective Order on the basis that a Supplying Party produces Designated Materials containing the same information. A Receiving Party possessing or acquiring information other than through disclosure by a Supplying Party may use or disclose that information without prior consent of any party or the Court, but may not, under any circumstance, use or disclose Confidential Information, Outside Attorneys’ Eyes Only Information, or Designated Materials produced by a Supplying Party except as provided by the terms of this Protective Order.* If a Supplying Party knowingly discloses its own Confidential Information or Outside Attorneys’ Eyes Only Information in a public or non-redacted pleading filed in the Court’s public record or in a publication disseminated to the general public, the Supplying Party shall be deemed thereby to have consented to the removal of that designation with respect to the information disclosed.

Travelport remains concerned about AA’s disclosure of Travelport’s Designated Materials to Mr. Myers and his continued refusal to sign the First Amended Stipulated Protective Order. By offering the compromise above, Travelport does not waive any of Travelport’s rights to enforce the provisions of protective order in the Northern District of Texas case or in the Tarrant County case.

In light of the expedited briefing schedule, we must file our brief this evening in response to your motion, but we welcome discussions with you about a resolution to which all parties can agree.

Regards,
Craig

Craig G. Falls
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