



Further, Travelport requests that the terms of the Second Amended Stipulated Protective Order otherwise remain in effect with respect to the permanently sealed documents. For example, notwithstanding the permanent sealing of any document, parties should be permitted to possess, use, control, and disclose their own confidential documents or information. Similarly, if any party that is in possession of permanently sealed records is served with a discovery request, subpoena, or an order issued in other litigation or proceedings that would compel disclosure of the permanently sealed records, the terms of paragraph 27 of the Second Amended Stipulated Protective Order should govern the party's response.

### **ARGUMENT**

While there is a general presumption in favor of a public right of access to Court proceedings, that right is “not absolute” and the Court has discretion to seal confidential materials. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597-98 (1978); *SEC v. Van Waeyenberghie*, 990 F.2d 845, 848 (5th Cir. 1993). In exercising its discretion to seal public records, this court must balance the public right of access against any interests favoring non-disclosure. *See Nixon*, 435 U.S. at 599 (advising courts to consider “relevant facts and circumstances of particular case”); *Belo Broadcasting Corp. v. Clark*, 654 F.2d 423, 428 (5th Cir. 1981) (noting that there are instances where “the common-law right of inspection has bowed before the power of the court to insure that its records are not used as vehicles for improper purposes”) (internal quotation omitted). Because such a balancing exercise is necessarily fact-intensive, “the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.” *Nixon*, 435 U.S. at 599.

One factor justifying restricting public access is where the confidential materials reflect “sources of business information that might harm a litigant’s competitive standing.” *Id.* at 598; *see also Oldendorff Carriers GmbH & Co., KG v. Grand China Shipping Co., Ltd.*, 2013 WL 1867604, at \*4 (S.D. Tex. Apr. 22, 2013) (continuing to seal documents because of the plaintiff’s “reliance on the confidential nature of these agreements, as well as the possibility that disclosure would potentially harm its competitive standing”).<sup>1</sup> For example, documents reflecting confidential business plans, trade secrets, or details regarding a company’s relationships with its suppliers or customers, are all appropriately restricted from public access. *See, e.g., Oldendorff Carriers GmbH & Co., KG*, 2013 WL 186704, at \*5 (sealing business plans); *Gate Guard Servs. L.P. v. Solis*, 2012 WL 4625679, at \*2-3 (S.D. Tex. Sept. 30, 2012) (sealing client identities and marketing strategy documents);<sup>2</sup> *see also, e.g., In re High-Tech Emp. Antitrust Litig.*, 2013 WL 163779, at \*4, \*9 (N.D. Cal. Jan. 15, 2013) (sealing documents relating to parties’ strategies, competitive positions, and business operations).<sup>3</sup>

The documents that Travelport seeks to permanently seal, which are reflected in Exhibit 1 to the Appendix, contain confidential, highly secretive details relating to Travelport’s business strategies and its relationships with its suppliers and customers. (*See App.* at 36-37, ¶ 3 (Decl. of Thomas DeMay).) These documents, if made available to Travelport’s competitors, suppliers, or customers would provide them with sensitive information that they could use to take advantage of Travelport in business dealings or to use the inside information to compete with Travelport in

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<sup>1</sup> *See App.* at 5-9.

<sup>2</sup> *See App.* at 9-12.

<sup>3</sup> *See App.* at 13-35.

the marketplace. (*Id.* at 37, ¶ 4.) Accordingly, the disclosure of these materials would cause great injury to Travelport.

The materials that Travelport seeks to permanently seal fall into two main categories: (1) documents reflecting internal Travelport business strategies, plans, or product development efforts; and (2) documents reflecting confidential details regarding the business relationships between Travelport and its suppliers or customers. (*Id.* at 37, ¶ 3.) Some documents fall into both categories. (*Id.*) With regard to the first category, Travelport seeks to seal the following docket entries (see Exhibit 1, (App. at 1-4), for a full description of the document, including the date filed and full title of the document): 172, 256, 257, 278, 279, 280, 281, 290, 291, 297, 298, 316, 317, 320, 321, 327, 328, 344, 346, 347, 455, and 456. With regard to the second category, Travelport seeks to seal the following docket entries: 52, 57, 66, 70, 148, 159, 170, 171, 182, 183, 185, 203, 216, 217, 218, 222, 223, 224, 225, 231, 258, 265, 288, 307, 308, 388, 425, and 426.

With regard to all of these documents, Travelport took great effort to maintain the secrecy of these materials during the litigation. (*See* App. at 36, ¶ 2.) First, the parties agreed to and filed stipulated protective orders to govern the treatment of highly confidential and proprietary business information. All of the variations of these protective orders were approved by the Court. (*See* Docs. 130, 267 & 374.) Next, along with the other parties to the litigation, Travelport sought and obtained from the Court an order that authorized parties and third-parties to file documents under seal with the Court. (Doc. 69.) All of these actions were taken to maintain the confidentiality of the highly confidential Travelport materials and to ensure that these materials were not made available to the general public.

Accordingly, Travelport seeks an order permanently sealing the documents listed in Exhibit 1 to the Appendix to prevent the competitive harm that would result from the disclosure of these documents. The documents all contain confidential, proprietary Travelport information that reflects Travelport business plans or strategies or details regarding Travelport's relationship with its suppliers or customers.

### **CONCLUSION**

For the foregoing reasons, Travelport respectfully requests that the documents listed in Exhibit 1 be permanently sealed.

Dated: October 14, 2013

Respectfully submitted,

*/s/ Michael L. Weiner* \_\_\_\_\_

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**CERTIFICATE OF CONFERENCE**

On October 14, 2013, I conferred with counsel for American Airlines (Daniel Klein) via email; counsel for Sabre (Scott Fredericks) via email; and counsel for Orbitz (Brendan McShane) via email, with regard to this Motion. Counsel for all parties indicated that they do not oppose the relief sought in this Motion.

*/s/ Justin N. Pentz*

Justin N. Pentz

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of October, 2013, 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/ Justin N. Pentz* \_\_\_\_\_  
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