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

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In re:	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> , ¹	:	Case No. 20-11133 (MG)
	:	
Debtors.	:	(Jointly Administered)
	:	

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**DEBTORS’ SUPPLEMENTAL REPLY TO OBJECTION OF THE UNITED STATES
TRUSTEE TO ENTRY OF ORDER AUTHORIZING THE DEBTORS TO PAY WAGES,
COMPENSATION, EMPLOYEE BENEFITS AND RELATED RELIEF**

¹ The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



Avianca Holdings S.A. and its affiliated debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) respectfully submit this supplemental reply to the *Objection of the United States Trustee to Entry of Order Authorizing the Debtors to Pay Wages, Compensation, Employee Benefits and Related Relief* [Docket No. 222] and in further support of the *Debtors’ Motion for an Order Pursuant to Section 363(b), 507, and 105(a) of the Bankruptcy Code (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Wages, Compensation and Employee Benefits and (B) Continue Payment of Wages, Compensation, Employee Benefits and Related Administrative Obligations in the Ordinary Course of Business; and (II) Authorizing and Directing Applicable Banks and Financial Institutions to Process and Pay All Checks Presented for Payment and to Honor All Funds Transfer Requests Made by the Debtors* [Docket No. 3] (the “Wages Motion”),² and respectfully represent as follows:

PRELIMINARY STATEMENT

1. As reflected in the agreed order approving the majority of the relief requested in the Wages Motion [Docket No. 291], the Debtors and the Office of the United States Trustee have successfully managed to narrow the scope of the remaining disputes in connection with the Wages Motion. Indeed, the only remaining issue in dispute is the Debtors’ request for authority to pay approximately \$359,742 in prepetition obligations due and owing to their employees on account of their Non-Insider Long Term Incentive Program (the “LTIP”).³

2. The Debtors’ request for authority to pay the LTIP obligations is justified by the facts and circumstances. Contrary to the statements made by the U.S. Trustee during the hearing on June

² Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Wages Motion or in the Debtors’ Reply in Support of the Wages Motion [Docket No. 238] (the “Reply”), as applicable.

³ The U.S. Trustee sought to exclude five participants from the Non-Insider Retention Plan. The Debtors have agreed to exclude these participants from the relief they are currently seeking with respect to the Wages Motion, without prejudice to their ability to seek relief as to those participants at a later date.

11, any failure by the Debtors to pay their employees the amounts that are (or will become) due and owing would be enormously damaging to both the Debtors and the individual employees themselves. The Debtors' failure to pay amounts due under the LTIP will substantially increase the risk of the covered employees (many of whom are critical to the business) leaving their jobs with the Debtors, as well as significant reputational damage. The Debtors also risk running afoul of local labor laws in the very jurisdictions that are the lifeblood of their operations. As it relates to the employees, many will be deprived of compensation that they are unequivocally owed and are relying on in the midst of economic conditions not seen since the global recession of 2008-2009. The U.S. Trustee's characterization of the Debtors' employees as not "living paycheck-to-paycheck" could not be further from the truth.⁴ Many of the Debtors' employees very likely are living paycheck-to-paycheck given the current economic downturn, and many are relying on the payments that are owed to them by the Debtors, regardless of when these payments accrued.

3. The Debtors are in the midst of navigating the challenging economic conditions imposed by the unprecedented COVID-19 global pandemic. Their ability to do this depends on their employees. The skills and experience of the Debtors' employees, as well as their relationships with customers and vendors and their institutional knowledge, are critical to the Debtors' ability to operate their businesses successfully and effectively through the current challenges facing the airline industry, and to best position themselves to reorganize. Absent all of the relief requested in the Wages Motion, the stability of the Debtors' business operations will be irreparably undermined by

⁴ At the June 11 hearing, the U.S. Trustee stated: "For example, the answer that we get is sort of a fairly common and routine one, even without the pandemic, the idea of the fear of employees resigning and going to other employers. Frankly, in this case, it would seem to me that that fear is even less of a concern than the normal bankruptcy case. It's not as if there's a robust pool of employment opportunities for these individuals and, in fact, the idea that [is] frequently used to justify these payments is that these employees are living paycheck-to-paycheck and need it for their routine daily living. Here, we have incentive payments that were earned in 2018, which have not been paid and which has not caused the [employees] to take the step of saying, all right, if I don't get paid, I'm going to seek alternative employment." Hr'g Tr. 62:4-16 (June 11, 2020).

the possibility that many of their employees will seek other employment opportunities. Indeed, certain of the Debtors' critical employees have already resigned in the past few months, and more have received competitive employment offers from other companies, including those outside of the aviation industry.

4. For these reasons, as further detailed below and as set forth in the *Declaration of Adrian Neuhauser in Support of the Debtors' Supplemental Reply to Objection of the United States Trustee to Entry of Order Authorizing the debtors to Pay Wages, Compensation, Employee Benefits and Related Relief*, annexed hereto as **Exhibit A** (the "Neuhauser Declaration") and the *Declaration of Felipe Álvarez in Support of the Debtors' Supplemental Reply to Objection of the United States Trustee to Entry of Order Authorizing the debtors to Pay Wages, Compensation, Employee Benefits and Related Relief*, annexed hereto as **Exhibit B** (the "Álvarez Declaration"), the Debtors believe that the payment of prepetition amounts due under the LTIP is necessary to maximize the value of the Debtors' estates and, accordingly, is in the Debtors' best interests.

ARGUMENT

5. As described in the Wages motion, the Debtors seek authority, but not direction, to pay the prepetition amounts due and owing on account of the LTIP. Approximately \$359,742 is due under the LTIP, all of which relates to the 2018 incentive period. The LTIP covers approximately 90 of the Debtors' employees.

6. The circumstances here more than justify the Debtors' payment of the prepetition obligations associated with the LTIP. As a preliminary matter, various bankruptcy courts have authorized the payment of prepetition compensation to employees when justified by the circumstances, even when those amounts are beyond the scope of the priority cap set forth in section 507(a)(4) of the Bankruptcy Code and the payment of such amounts is contested. See, e.g., In re Pier 1 Imports, Inc., Case No. 20-30805 (Bankr. E.D. Va. Mar. 13, 2020) [Docket No. 348]

(approving payment of prepetition employee compensation obligations in excess of section 507(a)(4) priority cap over objection of United States Trustee, subject to a \$250,000 aggregate cap); In re Gibson Brands, Inc., Case No. 18-11025 (Bankr. D. Del. July 12, 2018) [Docket No. 431] (approving payment of prepetition employee compensation obligations in excess of section 507(a)(4) priority cap over objection of official committee of unsecured creditors, and noting at the hearing that “[t]he doctrine of necessity doesn’t rely on the provisions of Section 507 of the Code”, and that “employee morale is more of a concern in this instance than the dollars”), Hr’g Tr. 20:7-22:16 [Docket No. 428]; In re THQ Inc., Case No. 12-13398 (Bankr. D. Del. Jan. 11, 2013) [Docket No. 144] (approving payment of prepetition employee compensation obligations in excess of section 507(a)(4) priority cap over objection of official committee of unsecured creditors and ad hoc committee of noteholders).⁵

7. Courts may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. In re Ionosphere Clubs, 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989) (BRL). Specifically, the court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). Id. at 176; see also In re Fin. News Network Inc., 134 B.R. 732, 735-36 (Bankr. S.D.N.Y. 1991) (holding that the “doctrine of necessity” stands for the principle that a

⁵ The foregoing orders are attached hereto as **Exhibit C**.

bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor's reorganization).

8. Importantly, 28 of the employees covered by the LTIP are also participants in the Non-Insider Retention Plan for key employees, and are owed approximately \$164,549 of the total LTIP obligations owed by the Debtors (or approximately 46% of the total LTIP obligations). Neuhauser Decl. ¶ 5. The record is clear, and the United States Trustee does not dispute, that each of the Non-Insider Retention Plan participants is critical to the operation of the Debtors' business. Neuhauser Decl. ¶ 5. With respect to the LTIP participants that are not covered by the Non-Insider Retention Plan, these employees are similarly critical to the Debtors' business. Nearly all of the 90 LTIP participants have the title "director," as they all serve in non-insider managerial roles in various departments and units of the Debtors' business. The failure to pay the amounts that are owed to these employees may result in defections, which in turn would cause the Debtors to lose valuable and irreplaceable institutional and aviation industry knowledge and incur significant costs in recruiting and attracting similarly qualified replacements, to the extent similarly qualified and experienced replacements exist and would agree to employment with a debtor in chapter 11—let alone during the COVID-19 crisis. Neuhauser Decl. ¶ 5.

9. In addition, local labor laws in the various jurisdictions in which the Debtors operate require the payment of the LTIP obligations. The Colombian Constitutional Court, for example, has granted constitutional protection to obligations due to employees for salaries, benefits, and pensions, and such obligations are granted first priority in any Colombian insolvency proceeding. The recognition and payment of these kind of claims is generally considered a fundamental constitutional right as it relates to articles 11 (Right to Life), 49 (Health), 25 (Work), 48 (Social Security), and 53 (Payment of Wages) of the Colombian Constitution. Álvarez Declaration at ¶ 4.

10. The failure to pay labor claims in Colombia, including the LTIP obligations, may result in the commencement of litigation against the Debtors in Colombia. Since many of the potential employee litigants would have little or no contacts with the United States, the automatic stay under the Bankruptcy Code may not be enforceable against such litigants in Colombia. Thus, the Debtors and their management team may need to devote substantial time and resources to adjudicating these claims, which may result in sizable damages claims against the Debtors. In addition to ordinary litigation claims, the failure to pay labor claims could result in a “tutela” action against the Debtors, which is an appeal for immediate relief that allows Colombian citizens to make claims to their constitutionally protected fundamental rights without need for a lawyer and must be responded to by a Colombian judge within 10 days. Álvarez Declaration at ¶ 5; see generally, Whitney K. Taylor, AMBIVALENT LEGAL MOBILIZATION: PERCEPTIONS OF JUSTICE AND THE USE OF THE TUTELA IN COLOMBIA, 52 Law & Soc’y Rev. 337 (June 2018). For such actions, the Debtors may not be able to enforce the automatic stay to protect the estates and their property from the exercise of remedies by such claimants.

11. Failure to satisfy the obligations due under the LTIP also may subject the Debtors to regulatory or administrative penalties assessed by the Colombian Ministry of Labor. Such penalties could approximate up to COP \$4.5 billion (approximately USD \$1.24 million). Álvarez Declaration at ¶ 6.

12. Any failure to pay the LTIP obligations also may impede the Debtors’ reorganization efforts. To the extent the Debtors decide to seek local recognition of their chapter 11 plan in Colombia, the risk of a Colombian court denying recognition of the chapter 11 plan would be significantly increased if it does not provide for the payment of all valid employee claims. Under Colombian law, the labor claims have priority over all other claims, whether secured or unsecured.

Any recovery to secured creditors is possible only if labor credits have been paid in full, or if the debtor can prove that other assets of the estate are sufficient to satisfy outstanding labor claims. Thus, to the extent that the LTIP obligations remain unpaid, local recognition of the Debtors' chapter 11 plan may not be a viable option for the Debtors. Álvarez Declaration at ¶ 7.

13. The Court in In re LATAM Airlines Group S.A. recently considered this overlay of local labor laws in the context of a similar section 507(a)(4) objection by the U.S. Trustee. In overruling the U.S. Trustee's objection and permitting the Debtors to make payments in excess of the section 507(a)(4) priority cap, the Court questioned the U.S. Trustee as follows:

But I do wonder, how do you deal with the fact that if I don't authorize this payment, then there could be problems for the companies in each of the local jurisdictions ... there is concern that because the local law is different than our law, that they would be required to make the payments. The automatic stay might not protect them in these -- that there would be a local enforcement with respect to the amounts due and owing.

Hr'g Tr. 86:14-23, In re LATAM Airlines Group S.A., Case No. 20-11254 (Bankr. S.D.N.Y. June 23, 2020) (JLG). Here, the Court should apply the same reasoning. The non-payment of the LTIP obligations would not only result in disastrous consequences for the Debtors in terms of employee morale, but could also be inconsistent with multiple local labor laws and result in the commencement of various proceedings against the Debtors for which they may not be able to avail themselves of the protections afforded by the automatic stay.

14. For these reasons, the Debtors request that the Court grant the Wages Motion as to the LTIP and overrule the U.S. Trustee's objection.

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Conclusion

WHEREFORE, the Debtors respectfully request that the Court enter the order granting the relief requested in the Wages Motion and such other and further relief for the Debtors as may be just and proper.

Dated: New York, New York
July 14, 2020

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*Counsel for Debtors and
Debtors-in-Possession*

Exhibit A

Neuhauser Declaration

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

-----X
In re: : Chapter 11
: :
AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
: :
Debtors. : (Jointly Administered)
: :
-----X

**DECLARATION OF ADRIAN NEUHAUSER IN SUPPORT OF DEBTORS’
SUPPLEMENTAL REPLY TO OBJECTION OF THE UNITED STATES TRUSTEE
TO ENTRY OF ORDER AUTHORIZING THE DEBTORS TO PAY WAGES,
COMPENSATION, EMPLOYEE BENEFITS AND RELATED RELIEF**

I, ADRIAN NEUHAUSER, hereby declare under penalty of perjury:

1. I am the Chief Financial Officer of Avianca Holdings S.A., one of the above-captioned debtors and debtors-in-possession (each, a “Debtor” and, collectively, the “Debtors”), and have served in this position since June 2019. I have more than twenty (20) years of experience in the financial sector and was most recently a Managing Director at Credit Suisse, based in Chile and covering airlines throughout Latin America from 2016 to 2019. Previously, I held senior positions in investment banking at Deutsche Bank, Bank of America and Merrill Lynch.

¹ The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

2. I submit this declaration in support of the *Debtors' Supplemental Reply to Objection of the United States Trustee to Entry of Order Authorizing the debtors to Pay Wages, Compensation, Employee Benefits and Related Relief* filed contemporaneously herewith. Except as otherwise indicated, I have personal knowledge of all facts in this declaration, based on my position with Debtors and familiarity with the Debtors' business and compensation practices, including the design of the Debtors' incentive-based plans.

3. For the reasons described below, it is my opinion that the Debtors' ability to pay the amounts due and owing under the LTIP is necessary and appropriate. If called upon to testify, I would testify competently to the facts set forth in this declaration.

4. If the Debtors do not obtain the authority to pay all obligations that are due and owing under the LTIP, substantial harm may result for both the Debtors and the applicable employees. The payment of the prepetition amounts due on account of the LTIP is critical to employee morale and to avoiding a potential loss of employees. Without the ability to honor payments that are due and owing under the LTIP, the Debtors will be at increased risk of attrition among the covered employees, which in turn would cause the Debtors to lose valuable and irreplaceable institutional and aviation industry knowledge and incur significant costs in recruiting and attracting similarly qualified replacements (to the extent similarly qualified and experienced replacements exist and would agree to employment with a debtor in chapter 11). The amounts due under the LTIP have already accrued and became payable prepetition as part of the applicable employees' compensation, and many of these employees are likely relying on receiving this income which they have already earned, particularly during the COVID-19 crisis.

5. The LTIP covers 28 of the employees that are also covered by the Non-Insider Retention Plan. These 28 employees are owed approximately \$164,549 of the total LTIP

obligations that are owed by the Debtors (or approximately 46% of the total LTIP obligations). All of these employees were identified as hard-to-replace managerial employees that are not members of the Debtors' senior management team. Each plays a vital role in the Debtors' day-to-day operations, working across the Debtors' organizational structure, in various areas of expertise including finance, human resources, legal, e-commerce, operations, airports, cargo, procurement, investor relations, engineering, and customer experience. With respect to the LTIP participants that are not also covered by the Non-Insider Retention Plan, these employees are similarly critical to the Debtors' business. Nearly all of the 90 LTIP participants have the title "director," as they all serve in non-insider managerial roles in various departments and units of the Debtors' business. The services provided by these employees are essential to the survival of the Debtors' businesses. Without the services of the employees covered by the LTIP, the Debtors could no longer operate their businesses.

6. Additionally, based on the advice of local counsel, it is my understanding that the Debtors' non-payment of any of the LTIP obligations could violate multiple local labor laws and legal requirements. As such, I believe it is in the best interests of the Debtors to obtain all requisite authority to pay all such LTIP obligations that are validly due and owing.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Date: July 14, 2020
New York, New York

By: /s/ Adrian Neuhauser
Adrian Neuhauser
Chief Financial Officer
Avianca Holdings S.A.

Exhibit B

Álvarez Declaration

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

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: In re: : Chapter 11
: :
: AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
: :
: Debtors. : (Jointly Administered)
: :
-----X

**DECLARATION OF FELIPE ÁLVAREZ IN SUPPORT OF DEBTORS’
SUPPLEMENTAL REPLY TO OBJECTION OF THE UNITED STATES TRUSTEE
TO ENTRY OF ORDER AUTHORIZING THE DEBTORS TO PAY WAGES,
COMPENSATION, EMPLOYEE BENEFITS AND RELATED RELIEF**

I, Felipe Álvarez, hereby declare under penalty of perjury:

1. I am a member of the firm Álvarez Liévano & Laserna, which maintains an office for the practice of law at Cra. 14 #94-44, Comuna Chapinero, Bogotá DC – Colombia.
2. I am an attorney at law admitted to practice before the courts of Colombia. I have practiced law in Colombia for 20 years.
3. I submit this declaration in support of the *Debtors’ Supplemental Reply to Objection of the United States Trustee to Entry of Order Authorizing the debtors to Pay Wages, Compensation,*

¹ The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); AeroInversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

Employee Benefits and Related Relief filed contemporaneously herewith. Except as otherwise indicated, I have personal knowledge of all facts in this declaration.

4. Under Colombian law, the Debtors are generally required to continue paying their obligations to their employees, including under the Long Term Incentive Plan (“LTIP”). The Colombian Constitutional Court has granted constitutional protection to obligations due to employees for salaries, benefits, and pensions, and such obligations are granted first priority in any Colombian insolvency proceeding. The recognition and payment of these kind of claims is generally considered a fundamental constitutional right as it relates to articles 11 (Right to Life), 49 (Health), 25 (Work), 48 (Social Security), and 53 (Payment of Wages) of the Colombian Constitution.

5. The failure to pay labor claims in Colombia, including the LTIP obligations, may result in the commencement of litigation against the Debtors in Colombia. Since many of the potential employee litigants would have little or no contacts with the United States, the automatic stay under the Bankruptcy Code may not be enforceable against such litigants in Colombia. Thus, the Debtors and their management team may need to devote substantial time and resources to adjudicating these claims, which may result in sizable damages claims against the Debtors. In addition to ordinary litigation claims, the failure to pay labor claims could result in a “tutela” action against the Debtors, which is an appeal for immediate relief that allows Colombian citizens to make claims to their constitutionally protected fundamental rights without need for a lawyer and must be responded to by a Colombian judge within 10 days.

6. Failure to satisfy the obligations due under the LTIP also may subject the Debtors to regulatory or administrative penalties assessed by the Colombian Ministry of Labor. Such penalties could be up to COP \$4.5 billion (approximately USD \$1.24 million).

7. Any failure to pay the LTIP obligations also may impede the Debtors' reorganization efforts. To the extent the Debtors decide to seek local recognition of their chapter 11 plan in Colombia, the risk of a Colombian court denying recognition of the chapter 11 plan would be significantly increased if the plan does not provide for the payment of all valid employee claims. Under Colombian law, the labor claims have priority over all other claims, whether secured or unsecured. Any recovery to secured creditors is possible only if labor credits have been paid in full, or if the debtor can prove that other assets of the estate are sufficient to satisfy outstanding labor claims. Thus, to the extent that the LTIP obligations remain unpaid, local recognition of the Debtors' chapter 11 plan may not be a viable option for the Debtors.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Date: July 14, 2020
New York, New York

By: /s/ Felipe Álvarez
Felipe Álvarez
Álvarez Liévano & Laserna

Exhibit C

Cited Orders

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Proposed Co-Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , ¹)	Case No. 20-30805 (KRH)
Debtors.)	(Jointly Administered)
)	

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO (A) PAY PREPETITION
WAGES, SALARIES, OTHER COMPENSATION, AND
REIMBURSABLE EXPENSES AND (B) CONTINUE EMPLOYEE
BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"): (i) authorizing the Debtors to (a) pay all prepetition and postpetition obligations on account of the Employee

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* filed contemporaneously herewith. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Compensation and Benefits Programs in the ordinary course of business and (b) continue to administer the Employee Compensation and Benefits Programs, including payment of prepetition obligations related thereto and (ii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to: (a) continue and discontinue the Employee Compensation and Benefits Programs in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law; and (b) pay and honor prepetition amounts outstanding under or related to the Employee Compensation and Benefits Programs in the ordinary course of business. The Debtors shall provide five (5)

business days’ notice and consult with the Official Committee of Unsecured Creditors (the “Committee”) prior to making any material modification to any Employee Compensation and Benefits Program.

3. Notwithstanding anything to the contrary herein, the Debtors are authorized, but not directed, in their sole discretion, to pay, remit, or reimburse, as applicable, not more than the following prepetition amounts:

Employee-Related Obligations	Final Amount
Employee Compensation	\$9,600,000
Independent Contractor and Temporary Staff Compensation	\$347,000
Payroll Processing Fees	\$0
Withholding Obligations	\$3,800,000
Reimbursable Expenses	\$187,100
Charitable Donations	\$0
Relocation Expenses	\$30,000
Employee Discount	\$0
U.S. Health Programs	\$4,820,220
Canada Health Programs	\$50,000
U.S. Life Insurance and Disability Programs	\$51,000
Canada Life Insurance and Disability Programs	\$33,000
Workers’ Compensation Programs	\$24,110,000 ³
Retirement Plans	\$155,200
Paid and Unpaid Leave	\$8,300,000 ⁴
Non-Insider Employee Severance Program	As set forth herein.
Postpetition Non-Employee Director Compensation	\$0

4. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers’ Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized to continue the Workers’ Compensation

³ This amount includes all prepetition claims on account of the Workers’ Compensation Programs, the overwhelming majority of which will not come due during these chapter 11 cases.

⁴ For the avoidance of doubt, the Paid and Unpaid Leave is not a current cash payment obligation.

Program and pay all prepetition amounts relating thereto in the ordinary course of business. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

5. The Debtors are authorized to continue the Non-Insider Employee Severance Program as follows: the Debtors are authorized to pay eligible U.S.-based non-insider store Employees and distribution center Employees who received notice of separation on or prior to the date of this Order fifty percent (50%) of all severance obligations, up to a cap of \$3,400,000. The Debtors are authorized, but not directed, to comply with the Non-Insider Employee Severance Program in respect of Canadian-based Employees and pay applicable severance entitlements to Canadian-based Employees, up to a cap of \$1,625,000. Subject to agreement with the DIP Lenders and the Term Lenders, and in consultation with the Committee, the Debtors are authorized, but not directed, to pay severance amounts to eligible Employees who receive notice of separation after the date of this Order. All amounts set forth in this paragraph shall be included in the DIP Budget and any subsequent budget controlling these chapter 11 cases (including, for the avoidance of doubt, any wind-down budget, if any, or any budget contemplated if these chapter 11 cases convert to cases under chapter 7 of the Bankruptcy Code).

6. The Debtors are authorized, but not required to pay amounts to Employees that exceed those proscribed by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code in an amount not to exceed \$250,000 in the aggregate.

7. The Debtors shall provide the Committee, by and through their advisors, a bi-weekly report of all payments made on account of the Independent Contractor and Temporary Staff Compensation and Non-Insider Employee Severance, subject to the terms and conditions of

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: Mar 13 2020
Richmond, Virginia

/s/ Kevin R. Huennekens
United States Bankruptcy Judge

Entered on Docket: Mar 13 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams

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Peter J. Barrett (VA 46179)
Jeremy S. Williams (VA 77469)
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CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

Notice Recipients

District/Off: 0422-3
Case: 20-30805-KRH

User: manleyc
Form ID: pdford9

Date Created: 3/13/2020
Total: 1

Recipients of Notice of Electronic Filing:

aty Jeremy S. Williams jeremy.williams@kutakrock.com

TOTAL: 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- x
In re: : Chapter 11
: :
GIBSON BRANDS, INC., *et al.*, : Case No. 18-11025 (CSS)
: :
Debtors.¹ : Jointly Administered
: :
----- x Re: Docket No. 295, 365, 380 & 429

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363, 507(a), 541, 1107(a) AND 1108, AND
FED. R. BANKR. P. 6003 AND 6004, (I) AUTHORIZING, BUT NOT DIRECTING, THE
DEBTORS TO PAY CERTAIN ADDITIONAL AMOUNTS ON ACCOUNT OF
PREPETITION WAGES, COMPENSATION AND EMPLOYEE BENEFITS; AND
(II) GRANTING OTHER RELATED RELIEF**

Upon the supplemental motion (the "Supplemental Motion")² of the Debtors for an order (the "Order"), pursuant to Bankruptcy Code sections 105(a), 363, 507(a)(4), 507(a)(5), 541, 1107(a) and 1108, and Bankruptcy Rules 6003 and 6004 (i) authorizing, but not directing, the Debtors to pay certain additional amounts on account of prepetition wages, compensation and employee benefits, and (ii) granting other related relief; and upon consideration of the Supplemental Motion and all pleadings related thereto, including the First Day Declaration and the Fox Declaration; and upon the record of any hearing on the Supplemental Motion; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Supplemental Motion is required; and it appearing that the Court has jurisdiction to

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Gibson Brands, Inc. (4520); Cakewalk, Inc. (2455); Consolidated Musical Instruments, LLC (4695); Gibson Café & Gallery, LLC (0434); Gibson International Sales LLC (1754); Gibson Pro Audio Corp. (3042), Neat Audio Acquisition Corp. (3784); Gibson Innovations USA, Inc. (4620); Gibson Holdings, Inc. (8455); Baldwin Piano, Inc. (0371); Wurlitzer Corp. (0031); and Gibson Europe B.V. (Foreign). The Debtors' corporate headquarters is located at 309 Plus Park Blvd., Nashville, TN 37217.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Supplemental Motion.

consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Supplemental Motion and provided for herein is in the best interest of the Debtors, their estates, and creditors; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Supplemental Motion is GRANTED to the extent set forth herein for the reason set forth by the Court on the record at the hearing held on July 9, 2018.
2. The Debtors are authorized, but not directed, to pay and/or honor (including to any third parties that provide or aid in the monitoring, processing or administration of the Employee Obligations), in their discretion, the following additional amounts on account of Employee Obligations, as and when such obligations are due and consistent with the Debtors' ordinary course of business, as follows:

Employee Obligation	Additional Amount
Withholdings	\$120,000
Payroll Processors	\$45,000
Vacation Time Sell Back Option	\$500,000
Quarterly Bonus	\$10,200

3. The Debtors shall not pay any individual Employee on account of the Vacation Time Sell Back Option for more than five (5) vacation days.
4. For the avoidance of doubt, the amounts set forth in the paragraph 2 of this Order are in addition to the amounts approved by the Final Employee Order.
5. Except for authorizing the payment of the additional amounts set forth above, nothing herein is intended to modify any provision of the Final Employee Order.

6. The Debtors' banks and other financial institutions shall be and hereby are authorized to receive, process, honor and pay all prepetition and postpetition checks and fund transfers on account of the Employee Obligations that had not been honored and paid as of the Petition Date, up to the amounts authorized to be paid pursuant to this Order and the Final Employee Order, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors shall be and hereby are authorized to issue new postpetition checks or effect new postpetition fund transfers on account of the Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

7. The Debtors are authorized, but not directed, in their discretion, to pay all processing fees associated with, and all costs incident to, the foregoing.

8. Except as otherwise set forth herein, any party receiving payment from the Debtors is authorized to rely upon the representations of the Debtors as to which payments are authorized by this Order.

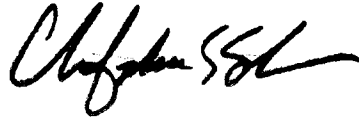
9. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in the Motion or this Order shall be deemed: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of any party's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (e) a waiver of any party's rights under the Bankruptcy Code or any other applicable law; or (f) to create any rights in favor of, or enhance the status of, any claim held by any person or entity.

10. Notwithstanding Bankruptcy Rule 6004(h), the Order shall be effective and enforceable immediately upon entry hereof.

11. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: July 12, 2018
Wilmington, Delaware



HONORABLE CHRISTOPHER S. SONTCHI
CHIEF UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X
In re: : Chapter 11
THQ INC., *et al.*, : Case No. 12-13398 (MFW)
Debtors.¹ : Jointly Administered
: RE: Docket Nos. 9, 39, 70, and 98
-----X

**FINAL ORDER AUTHORIZING THE PAYMENT OF PREPETITION (A) WAGES,
SALARIES, AND OTHER COMPENSATION, (B) QUARTERLY SALES BONUSES
AND OUTSTANDING PROFIT SHARING BONUS, (C) REIMBURSABLE EMPLOYEE
EXPENSES, AND (D) EMPLOYEE MEDICAL AND SIMILAR BENEFITS**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (i) authorizing, but not directing, the Debtors to (a) pay prepetition wages, salaries, and other compensation, taxes, withholdings, and related costs, and reimbursable employee expenses, (b) pay and honor obligations relating to employee medical, insurance, and other benefit programs, and (c) continue their employee medical, insurance, and other benefits programs on a postpetition basis; and (ii) authorizing and directing applicable banks and other financial institutions to honor and process checks and transfers related to such obligations; and upon the Farrell First Day Declaration; and this Court having found that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that the Motion is a core

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); Volition, Inc. (4944); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless Inc. (7991); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion appearing adequate and appropriate under the circumstances; and this Court having found that no other or further notice need be provided; and this Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before this Court (the "**Hearing**"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and this Court having found that relief requested in the Motion is necessary to prevent immediate and irreparable harm; and any objections to the relief requested herein having been withdrawn, overruled on the merits, or otherwise resolved; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment, to pay and honor prepetition obligations associated with the Compensation Obligations in an amount not to exceed \$975,000, unless otherwise ordered by the Court; provided, however, that the Debtors may not pay, absent further order of the Court, any Employee, Temporary Employee, or Independent Contractor more than \$11,725, except as provided herein.
3. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment, to pay and honor prepetition obligations associated with the Quarterly Sales Bonuses in an amount not to exceed \$75,000 in the aggregate, irrespective of

whether doing so will result in payments on account of prepetition obligations in an amount exceeding \$11,725 per Employee.

4. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment, to assume and assign prepetition obligations associated with the Outstanding Profit Sharing Bonus to non-insider Employees to a buyer who acquires the assets of Volition, Inc. and agrees to assume and pay such liability. For the avoidance of doubt, the Debtors are not authorized to pay any amounts on account of obligations associated with the Outstanding Profit Sharing Bonus.

5. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment, to pay and honor prepetition obligations to the certain Independent Contractor, in excess of \$11,725, associated with the Independent Contractor Obligations related to the development of the *Saints Row 4* game, as more fully described in the Motion; provided, however, that such amounts shall not exceed \$35,000.

6. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment, to pay and honor prepetition obligations to Resources Global Professionals, in excess of \$11,725, on account of the services provided by a certain Temporary Employee; provided, however, that such amounts shall not exceed \$30,000.

7. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Deductions and Payroll Tax Obligations to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' stated policies and prepetition practices.

8. The Debtors are authorized, but not directed, to continue to honor their Reimbursable Expense Obligations, including any prepetition obligations, to Employees and

applicable third-parties under the Corporate Card Program, including, but not limited to, American Express, for Reimbursable Expenses in accordance with the Debtors' stated policies and prepetition practices; provided, however, that the Debtors may not pay in excess of \$40,000 on account of prepetition Reimbursable Expense Obligations.

9. The Debtors are authorized, but not directed, to honor the Employee Benefit Plans, including, without limitation, (a) the Health Plans, (b) the Income Protection Plans, (c) Vacation and PTO, (d) the 401(k) Plan, and (e) the Flexible Spending Account Plan; and to make any necessary contributions to such programs and pay any unpaid premium, claim, or amount owed as of the Petition Date with respect thereto; provided, however, that the Debtors may not pay, absent further order of the Court, any amounts on account of accrued prepetition Vacation Time or PTO; provided further, however, that the Debtors may not pay in excess of \$500,000 on account of the Employee Benefits Obligations, exclusive of Withholding Obligations.

10. The Debtors are authorized, but not directed, to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Employee Obligations.

11. Nothing herein or in the Motion shall be deemed (i) to authorize the payment of any amounts that may be subject to section 503(c) of the Bankruptcy Code nor (ii) to violate or permit a violation of section 503(c) of the Bankruptcy Code.

12. In accordance with this order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the prepetition or postpetition obligations the Debtors are authorized to pay pursuant to this order is authorized to honor checks presented for payment and all fund transfer requests made by the Debtors related to

such obligations to the extent that sufficient funds are on deposit in such accounts.

13. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any Employee Obligations authorized to be paid by this order.

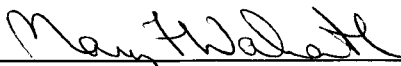
14. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

15. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied by the contents of the Motion.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this order shall be immediately effective and enforceable upon its entry.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order in accordance with the Motion.

Dated: January 11, 2013
Wilmington, Delaware



Mary F. Walrath
United States Bankruptcy Judge