

PLEASE TAKE NOTICE that a hearing (the “Hearing”) to consider the *Debtors’ Motion to Amend the Compensation and Benefits Order to Authorize Quarterly Bonus Payments to Non-Insider Employees* (the “Motion”) will be held at **10:00 a.m. (prevailing Eastern Time) on October 25, 2023**, and before the Honorable John P. Mastando III, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 501, New York, NY 10004.

PLEASE TAKE FURTHER NOTICE that any objections or responses to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York; (c) be filed electronically with this Court on the docket of *In re Voyager Aviation Holdings, LLC*, Case 23-11177 (JPM) by registered users of this Court’s electronic filing system and in accordance with the General Order M-399 (which is available on this Court’s website at <http://www.nysb.uscourts.gov>) by **October 18, 2023 at 4:00 p.m., prevailing Eastern Time**; and (d) be promptly served on the following parties: (i) the Chambers of the Honorable John P. Mastando III, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (ii) the Debtors, c/o Elisabeth McCarthy and Michael Sean Ewing (lisa.mccarthy@vah.aero; sean.ewing@vah.aero); (iii) Milbank LLP, 55 Hudson Yards, New York, NY 10001 (Attn: Samuel A. Khalil, Esq., Lauren C. Doyle, Esq., Brian Kinney, Esq. and Edward R. Linden, Esq. (skhalil@milbank.com, ldoyle@milbank.com, binney@milbank.com and elinden@milbank.com)), counsel for the Debtors other than the Participation Debtors; (iv) Vedder Price, 1633 Broadway, 31st Floor, New York, NY 10019 (Attn: Michael J. Edelman, Esq. and William W. Thorsness, Esq. (mjedelman@vedderprice.com and wthorsness@vedderprice.com)),

counsel for the Participation Debtors; and (v) William K. Harrington, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Annie Wells, Esq., Daniel Rudewicz, Esq., and Brian Masumoto, Esq).

PLEASE TAKE FURTHER NOTICE that copies of the Motion and other pleadings for subsequent hearings can be viewed and/or obtained by: (i) accessing the Court’s website at www.nysb.uscourts.gov, or (ii) on the website of the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC (“KCC”), at www.kccllc.net/voyageraviation or by contacting KCC directly at (877) 634-7163 (for callers within the United States and Canada) or +1 (424) 236-7219 (for international callers).

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

PLEASE TAKE FURTHER NOTICE that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

PLEASE TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your view on the Motion, then you or your attorney must attend the Hearing. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter orders granting the relief requested in the Motion with no further notice or opportunity to be heard.

[Remainder of page intentionally left blank]

Dated: October 11, 2023
New York, New York

/s/ Lauren C. Doyle

Samuel A. Khalil, Esq.

Lauren C. Doyle, Esq.

Brian Kinney, Esq.

Edward R. Linden, Esq.

MILBANK LLP

55 Hudson Yards

New York, NY 10001

Telephone: (212) 530-5000

Facsimile: (212) 530-5219

Email: skhalil@milbank.com
ldoyle@milbank.com
bkinney@milbank.com
elinden@milbank.com

*Counsel to all Debtors and Debtors in Possession
other than the Participation Debtors*

/s/ Michael J. Edelman

Michael J. Edelman, Esq.

William W. Thorsness, Esq. (admitted *pro hac vice*)

VEDDER PRICE P.C.

1633 Broadway, 31st Floor

New York, New York 10019

Telephone: (212) 407-7700

Facsimile: (212) 407-7799

Email: mjedelman@vedderprice.com
wthorsness@vedderprice.com

Counsel to the Participation Debtors

Samuel A. Khalil, Esq.
Lauren C. Doyle, Esq.
Brian Kinney, Esq.
Edward R. Linden, Esq.
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Michael J. Edelman, Esq.
William W. Thorsness, Esq. (admitted *pro hac vice*)
VEDDER PRICE P.C.
1633 Broadway, 31st Floor
New York, New York 10019
Telephone: (212) 407-7700
Facsimile: (212) 407-7799

Counsel to all Debtors and Debtors in Possession other than the Participation Debtors¹

Counsel to the Participation Debtors

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

In re:)
) Chapter 11
)
Voyager Aviation Holdings, LLC *et al.*,)
) Case No. 23-11177 (JPM)
)
Debtors.²) (Jointly Administered)
)

DEBTORS’ MOTION TO AMEND THE COMPENSATION AND BENEFITS ORDER TO AUTHORIZE QUARTERLY BONUS PAYMENTS TO NON-INSIDER EMPLOYEES

¹ “Participation Debtors” means, collectively, Aetios Aviation Leasing 1 Limited, Aetios Aviation Leasing 2 Limited, Panamera Aviation Leasing XII Designated Activity Company, and Panamera Aviation Leasing XIII Designated Activity Company.

² The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (8601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (9861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (5087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (2925); Voyager Aviation Aircraft Leasing, LLC (3865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (9652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.

By this motion (the “Motion”), Voyager Aviation Holdings, LLC and its above-captioned affiliates, as debtors and debtors in possession (collectively, the “Debtors” and, together with their non-Debtor affiliates, subsidiaries, and managed entities, the “Company”), seek to amend the *Final Order (I) Authorizing the Debtors to (A) Continue Compensation and Benefits Programs and (B) Satisfy Prepetition Obligations on Account of Compensation and Benefits Programs, and (II) Granting Related Relief* [Docket No. 151] (the “Compensation Order”) to authorize certain bonus payments to the Non-Insider Employees (as defined below). In support of the requested relief, the Debtors rely on the *Declaration of Robert A. Del Genio in Support of the Debtors’ Motion to Amend the Compensation and Benefits Order to Authorize Quarterly Bonus Payments to Non-Insider Employees* (the “Del Genio Declaration”), which is attached hereto at **Exhibit B** and is incorporated herein by reference. In further support of the requested relief, the Debtors respectfully state as follows:

Background

1. On July 27, 2023 (the “Petition Date”), each Debtor commenced a case under the Bankruptcy Code by filing a voluntary petition for relief in this Court (the “Chapter 11 Cases”). The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these cases, and no committees have yet been appointed or designated.

2. Further information regarding the Debtors’ business, capital structure, the circumstances leading to the commencement of the Chapter 11 Cases, and the facts and circumstances supporting the relief requested in this Motion is set forth in the *Declaration of*

Robert A. Del Genio, Chief Restructuring Officer of Voyager Aviation Holdings, LLC, in Support of Chapter 11 Petitions and First Day Motions [Docket No. 16] (the “First Day Declaration”).³

3. On the Petition Date, the Debtors filed the *Debtors’ Motion for an Entry of Interim and Final Orders (I) Authorizing them to (A) Continue Compensation and Benefits Programs, and (B) Satisfy Prepetition Obligations on Account of Compensation and Benefits Programs, and (II) Granting Related Relief* [Docket No. 11] (the “Employee Compensation Motion”). Among the relief requested, the Debtors sought authorization to pay bonuses (the “Quarterly Bonuses”) to their Non-Insider Employees under their quarterly bonus program (the “Quarterly Bonus Program”).

4. On July 28, 2023, the Court entered the *Interim Order (I) Authorizing The Debtors to (A) Continue Compensation and Benefits Programs, and (B) Satisfy Prepetition Obligations on Account of Compensation and Benefits Programs, and (II) Granting Related Relief* [Docket No. 33] and scheduled a hearing on the final relief requested in the Employee Compensation Motion for August 24, 2023.

5. On August 21, 2023, the Office of the U.S. Trustee (the “U.S. Trustee”) filed an objection to the final approval of certain aspects of the Employee Compensation Motion, including the request to pay the Quarterly Bonuses to the Debtors’ Non-Insider Employees. The U.S. Trustee has alleged that, because administration expense payments were involved, the Debtors had, on further notice, to demonstrate that such relief comported with section 503(c) of the Bankruptcy Code. *See Objection to Motion of Debtors For Entry of Interim and Final Orders Authorizing Them to (A) Continue Compensation and Benefits Programs, and (B) Satisfy Prepetition*

³ Capitalized terms not defined herein have the respective meanings ascribed to them in the First Day Declaration.

Obligations on Account of Compensation and Benefits Programs [Docket No. 75] (the “UST Objection”).

6. Because of the UST Objection, the Compensation Order, while approving the bulk of the relief sought in the Employee Compensation Motion, states that “nothing [t]herein shall be deemed to authorize the payment . . . any payments on account of the Bonus Program . . . absent further order of the Court.” Compensation Order ¶ 5. While the Debtors have been working with the U.S. Trustee in an effort to reach a consensual resolution of the UST Objection by providing additional pertinent information, the next payment under the Quarterly Bonus Program will be due on October 15, 2023 and, accordingly, the Debtors hereby seek to have the Compensation Order amended, such that they can pay the Quarterly Bonuses to the Non-Insider Employees.

Relief Requested

7. The Debtors are asking the Court to amend the Compensation Order by eliding the reference to the “Bonus Program” from paragraph 5 thereof, thus making all of the relief terms of the Compensation Order applicable to the payment of Quarterly Bonuses to their Non-Insider Employees. A proposed form of order is attached to this Motion as **Exhibit A**.

8. The statutory bases for the relief requested herein are sections 105(a), 363, and 503 of title 11 of the United States Code (the “Bankruptcy Code”) and rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Jurisdiction and Venue

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties,

cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

10. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Quarterly Bonus Program

11. As explained in detail in the Employee Compensation Motion, the Debtors maintain a very small employee base, consisting of just 13 individuals (the “Employees”).⁴ The Chief Financial Officer and the General Counsel constitute the “Management Team.” In addition, one Employee outside the Management Team serves on the board of directors of Voyager Aviation Management Ireland Designated Activity Company (“VAMI”), a Debtor. The remaining ten Employees (the “Non-Insider Employees”), who focus on the Debtors’ relationships with customers (or prospective customers) and bank lenders, the technical maintenance of the Debtors’ aircraft (including managing technical support for the Debtors’ customers, oversight of redelivery of aircraft, and maintaining relationships with aircraft and engine manufacturers), and various other financial, accounting, contract and office support services, are not “insiders,” as such term is defined in section 101(31) of the Bankruptcy Code.⁵

12. Each of the Non-Insider Employees report directly or indirectly to the Chief Financial Officer, the General Counsel, and/or the Chief Restructuring Officer. Although certain of the Non-Insider Employees have titles such as “SVP” or “Head of” (and one Employee serves as a director of certain non-Debtor affiliates), none of them (a) is appointed or hired directly by

⁴ Employees are further supported by the Chief Restructuring Officer and Chief Accounting Officer (who are not Employees), and independent contractors.

⁵ For the avoidance of doubt, just as in the Employee Compensation Motion, in this Motion, the Debtors are not seeking authorization to make any payments to “insiders.”

the Debtors' board of directors (the "Board"), (b) exercises managerial control over, or has responsibility for, the Debtors' operation as a whole, (c) directs the Debtors' overall corporate policy or governance, or (d) has any ability to control or direct the decisions of any Debtor in these Chapter 11 Cases.

13. At the time the Company determined to pursue a potential sale of its business, the Board recognized that the Non-Insider Employees might view such a sale as reason to leave the Debtors' employ. Accordingly, the Company converted its annual bonus program to a quarterly payment plan to ensure that the Non-Insider Employees understood that the Company recognized their value and that they would continue to receive at least the same compensation on a quarterly basis as they had in the prior year, even if their jobs were eliminated due to a mid-year sale.

14. The Quarterly Bonus Program provides the Non-Insider Employees with their target annual bonus (at a fixed percentage that ranges from 15% to 100% of their annual compensation) over the four quarters of the year. The Debtors pay approximately \$195,000 in Quarterly Bonuses to Non-Insider Employees each quarter. The Quarterly Bonuses are an essential component of the Non-Insider Employees' compensation. The next payment to the Non-Insider Employees under the Quarterly Bonus Program is due on October 15, 2023.

Basis for Relief

I. Payment of the Quarterly Bonus to Non-Insider Employees Is Authorized Under Section 363 of the Bankruptcy Code.

15. As an initial matter, the Debtors believe that maintaining their Quarterly Bonus Program and making postpetition payments to Non-Insider Employees thereunder is within the ordinary course of their business and therefore authorized by section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The Quarterly Bonus Program is

an essential component of the Debtors' compensation program for all Employees and similar programs have been utilized by the Company for years. The Debtors should be authorized to continue making payments under the Quarterly Bonus Program to the Non-Insider Employees in the ordinary course.

16. Moreover, to the extent the Court may find the payment of the Quarterly Bonuses to the Non-Insider Employees not to be an ordinary course payment, it should be approved under section 363(b)(1) of the Bankruptcy Code, which provides that a debtor "after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). To approve the use of estate property under section 363(b)(1) of the Bankruptcy Code, the Second Circuit requires a debtor to show that the decision to use the property outside of the ordinary course of business was based on the debtor's sound business judgment. *See, e.g., Official Comm. of Unsecured Creditors v. LTV Corp. (In re Chateaugay)*, 973 F.2d 141, 143 (2d Cir. 1992) (affirming the bankruptcy court's approval of debtors' asset sale pursuant to section 363(b) as a reasonable exercise of business judgment); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) (holding that the application of section 363(b) must be supported by "some articulated business justification, other than appeasement of major creditors").

17. Once a debtor articulates a valid business justification, a strong presumption arises that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and quotations omitted), appeal dismissed, 3 F.3d 49 (2d Cir. 1993). This rule applies with full force to questions of employee compensation, such as the

Quarterly Bonus Program. *See In re Velo Holdings, Inc.*, 472 B.R. at 212 (finding that “the business judgment standard under section 363(b)” applies to employee compensation and benefit matters).

18. The Debtors respectfully submit that payment of the Quarterly Bonus to Non-Insider Employees is a proper exercise of the Debtors’ business judgment as it is in the best interests of their estates and stakeholders. As described in the Employee Compensation Motion, the Non-Insider Employees perform various critical functions, including customer relations, technical support, finance, accounting, administrative support, accounts payable, and billing. The skills, knowledge and hard work of the Non-Insider Employees are critical to ensure that the Debtors continue to maximize value of their estates. The Non-Insider Employees are intimately familiar with the Debtors’ business processes and systems, possess unique skills, experience, knowledge, and understanding of the Debtors’ operations and infrastructure, and/or have developed relationships that are essential to the Debtors’ business. The Non-Insider Employees have already played a vital role in helping to achieve the Sale prepetition, stabilizing the Debtors’ operations upon commencement of these Chapter 11 Cases, and will be essential to the consummation of the Sale and the transfer of the Debtors’ assets to the purchaser. Indeed, while the Sale has been approved, a lot of hard work remains for the Non-Insider Employees to assist the Debtors with completing the aircraft transfers and novation of the customer leases.

19. The Non-Insider Employees are among the Debtors’ most valuable assets and their skills are essential to the effective operation of the Debtors’ business and critical to the success of the Chapter 11 Cases and completion of the Sale. Without the continued, uninterrupted services of the Non-Insider Employees, the Debtors’ business operations would be halted, the administration of their estates would be severely disrupted, and the Sale would be jeopardized.

Indeed, the Non-Insider Employees are so critical to the Debtors operations that the purchaser of the Debtors' aircraft assets has agreed to make offers of employment to all Non-Insider Employees on the same terms and with the same compensation and benefits as they currently receive from the Debtors.

20. Their services are vital to the Debtors' business, particularly as there is no duplication of staffing for a given function and, with the challenges the Debtors have faced over recent years, they have not had the ability to quickly fill positions if employees choose to terminate their employment. The Debtors cannot easily replace the Non-Insider Employees without adversely affecting their operations, distracting the Management Team from the restructuring efforts, and risking consummation of the Sale.

21. The Debtors' key constituencies, including nearly 90% of the holders of the Secured Notes, who are not receiving full recoveries in these Chapter 11 Case, have no objection to the payment of the Quarterly Bonuses to the Non-Insider Employees.

A. The Requested Relief Is Consistent with Section 503(c) of the Bankruptcy Code.

22. The payment of the bonuses under the Quarterly Bonus Program to the Non-Insider Employees is consistent with section 503(c)(3) of the Bankruptcy Code, which permits payments to a debtor's employees outside the ordinary course of business if such payments are justified by "the facts and circumstances of the case." 11 U.S.C. § 503(c)(3).

23. In this and other districts, courts have concluded that whether such payments are "justified by the facts and circumstances" of the case is to be determined by application of the business judgment rule. *See In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) ("[T]he 'facts and circumstances' language of 503(c)(3) creates a standard no different than the business judgment standard under section 363(b)."); *In re Borders Grp. Inc.*, 453 B.R. 459, 473-

74 (Bankr. S.D.N.Y. 2011) (evaluating debtors' KERP under business judgment rule); *In re Dana Corp.*, 358 B.R. 567, 576-77 (Bankr. S.D.N.Y. 2006) (describing factors that may be considered in determining whether compensation proposal meets the "sound business judgment test" in accordance with section 503(c)(3)). Accordingly, the determination of whether a bonus program is justified by the facts and circumstances of a particular case is the same as the analysis of whether the adoption of such program is a result of the exercise of the debtor's sound business judgment.

24. When determining whether a compensation proposal and the process for its development meet the "sound business judgment" test for purpose of approving a compensation plan under section 503(c)(3) of the Bankruptcy Code, courts in the Second Circuit have generally utilized the six factors identified in *In re Dana Corp.*: (a) whether the plan is calculated to achieve the desired performance; (b) whether the cost of the plan is reasonable in the context of a debtor's assets, liabilities, and earning potential; (c) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (d) whether the plan is consistent with industry standards; (e) whether the debtor performed due diligence in investigating the need for the plan; and (f) whether the debtor received independent advice in performing due diligence, creating, and authorizing the plan. 358 B.R. at 576-77. *See also In re Residential Capital, LLC*, 491 B.R. 73, 85-86 (Bankr. S.D.N.Y. 2013); *In re Borders Grp. Inc.*, 453 B.R. at 473-74.

25. No single factor is dispositive, and the court has discretion to weigh each of the above factors based on the specific facts and circumstances before it. *See, e.g., In re AMR Corp.*, 490 B.R. 158, 166 (Bankr. S.D.N.Y. 2013). Even the total absence of any one factor may be permissible so long as the presence of other factors ensured "that the [d]ebtors' interests were sufficiently protected." *In re Borders Grp., Inc.*, 453 B.R. 459, 477. *See also In re Glob. Aviation Holdings Inc.*, 478 B.R. 142 (Bankr. E.D.N.Y. 2012) (noting that "the relatively modest size of the

proposed bonus payouts made the retention of independent legal counsel economically inefficient.”).

26. The Debtors respectfully submit that the Quarterly Bonus Program satisfies the *Dana Corp.* test.

27. **First**, the Quarterly Bonus Program provides Employees with an annual bonus (payable quarterly) at a fixed percentage that ranges from 15% to 100% of their annual compensation. The payments are made over the four quarters of the year and are subject to claw back if the recipient voluntarily resigns or is terminated for cause.⁶ The program was designed to compensate Employees for their hard work, ensure that they received that compensation during regular intervals during the year pending a possible strategic transaction, and mitigate against the risk of losing any members of the Debtors’ essential workforce during this critical time. As a result of the program, the Non-Insider Employees have continued to sustain the Debtors’ business during these Chapter 11 Cases and to complete the work required to see the Debtors through the Sale process.

28. **Second**, the cost of the Quarterly Bonus Program is fair and reasonable in the context of the Debtors’ assets and liabilities. The cost of the Quarterly Bonus Program for the Non-Insider Employees is less than \$200,000 per quarter. The success of the Sale is dependent on the retention of the Non-Insider Employees. Without proper compensation of the Non-Insider Employees there is no guarantee that the Debtors will be able to successfully consummate the Sale, which is expected to bring more than \$800 million of value into the estates. Thus, the Debtors

⁶ The quarterly bonuses are paid 25% on each of April 15, 2023, July 15, 2023, October 15, 2023, and January 15, 2024. If a Non-Insider Employee voluntarily resigns or is terminated for cause prior to June 30, 2023, September 30, 2023, December 31, 2023, or March 31, 2024 (as applicable with respect to each installment, in order), then they must repay the corresponding bonus payment (less any withholding taxes).

believe that the benefits associated with the Quarterly Bonus Program would greatly outweigh the potential negative consequences of failing to honor their obligations to the Non-Insider Employees thereunder.

29. **Third**, the scope of the Quarterly Bonus Program is fair and reasonable and it does not discriminate among Employees. All Non-Insider Employees are eligible to receive Quarterly Bonuses.

30. **Fourth**, the Quarterly Bonus Program is consistent with the Debtors' historical practice as the Debtors routinely used similar programs prior to the commencement of these cases. As set forth in the Del Genio Declaration, it is common for businesses of comparable size to utilize similar awards to drive performance and retain employees during a sale of the company. Del Genio Decl. at ¶ 16.

31. **Fifth**, the Debtors performed appropriate due diligence to determine the need and appropriateness of the Quarterly Bonus Program. Such diligence involved a realistic analysis of both the Debtors' business needs and the type of performance that the Debtors sought to incentivize. Del Genio Decl. at ¶ 17.

32. **Finally**, The Debtors' due diligence was informed and supplemented with independent analysis by their independent prepetition advisors and the oversight and approval of the Board. *Id.*

33. Thus, payments of the Quarterly Bonuses to the Non-Insider Employees is justified by the facts and circumstances of these cases. Accordingly, the Debtors respectfully submit that section 503(c)(3) is satisfied.

II. Nothing in the Bankruptcy Code Prohibits Approval of the Quarterly Bonus Program for Non-Insider Employees.

34. Sections 503(c)(1) and 503(c)(2) of the Bankruptcy Code prohibits certain payments to “insiders” (by their plain language, section 503(c)(1) applies solely to retention payments to “insiders” and section 503(c)(2) applies solely to severance payments to “insiders”). These provisions of the Bankruptcy Code, however, do not prevent the Court from granting the requested relief because none of the Non-Insider Employees is an “insider” within the contemplation of section 503(c) of the Bankruptcy Code.

35. The Bankruptcy Code defines an “insider” of a corporate debtor to include, among others, a “director of the debtor,” an “officer of the debtor,” and a “person in control of the debtor.” 11 U.S.C. § 101(31). None of the Non-Insider Employees is a director of any Debtor.

36. Although certain of the Non-Insider Employees hold titles such as “Senior Vice President” or “Head of,” it is well-established that an employee’s job title, alone, does not make such employee an “insider.” Instead, numerous courts have concluded that an employee should qualify as an “insider” only if they have “at least a controlling interest in the debtor or . . . exercise[s] sufficient authority over the debtor so as to unqualifiably dictate corporate policy and the disposition of corporate assets.” *In re Velo Holdings, Inc.*, 472 B.R. at 212 (citations omitted). *See also In re Borders Grp. Inc.*, 453 B.R. at 469 (notice that “[c]ompanies often give employees the title ‘director’ or ‘director-level,’ but do not give them decision-making authority akin to an executive” and concluding that certain “director level” employees in that case were not insiders).

37. The Non-Insider Employees’ titles are designed to demonstrate the skill and expertise of the Non-Insider Employees, supporting the credibility they need in the industry to perform their role. Their knowledge and expertise supports their having such titles -- but none of the Non-Insider Employees has discretionary decision-making authority on issues of policy, the

overall direction of the company control or any material corporate transaction. Rather, the scope of the authority of each of them is limited and subject to the ultimate oversight and approval by the Management Team and/or the Chief Restructuring Officer. Del Genio Decl. at ¶ 10.

38. As persons lacking executive-level authority, the Non-Insider Employees are not considered “insiders” even where they have “director-level” titles. *See Borders Grp., Inc.*, 453 B.R. at 469-70 (finding “director-level” employees not to be insiders because they lack “decision-making authority akin to an executive” and do not report to the debtors’ board of directors); *In re Glob. Aviation Holdings, Inc.*, 478 B.R. 142, 148-49 (Bankr. E.D.N.Y. 2012) (finding director-level employees to not be Insiders because they did not have the responsibilities of a corporate director).

39. Finally, none of the Non-Insider Employees was appointed by the Board. *See In re Borders Grp., Inc.*, 453 B.R. 459, 468-69 (noting that “board appointment or election is frequently identified as distinguishing ‘officer’ positions from other titled positions within a corporation.”) (quoting *Office of the U.S. Trustee v. Fieldstone Mortgage Co.*, No. 08-755, 2008 WL 4826291, at *3 n.12 (D. Md. Nov. 5, 2008)).

III. The Court Should Direct Financial Institutions to Honor Authorized Payments.

40. To facilitate implementation of the above-requested relief, the Debtors request that the Court authorize all applicable financial institutions to receive, process, honor, and pay any and all checks drawn or electronic fund transfers from their accounts, whether such checks were presented prior to or after the Petition Date, to the extent such checks or electronic fund transfers are expressly identified by the Debtors as relating directly to the authorized payments related to the Quarterly Bonus Program. The Debtors also seek authority to issue postpetition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks

or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of these Chapter 11 Cases.

41. The Debtors believe that they have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and the anticipated authorization to use cash collateral. In addition, through the Debtors' existing cash management system, the Debtors believe that checks or other transfer requests can be readily identified as an authorized payment on account of the Quarterly Bonus Program, and the Debtors are prepared to assist their banks by confirming whether particular transfers are authorized by an order granting this Motion. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize, but not direct, all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests related to the relief requested in this Motion.

Reservation of Rights

42. Nothing contained herein is or should be construed as: (a) an implication or admission as to the validity of any claim against the Debtors or a waiver of the obligation of any claimant to file a proof of claim, (b) a promise to pay any claim or a waiver of the Debtors' or any other party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action, (d) a concession by the Debtors that any lien (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved), or (e) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code or as affecting the

Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to the Court's order approving the relief sought herein is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Motion Practice

43. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Bankruptcy Rule 9013-1(a).

Notice

44. The Debtors will provide notice of this Motion in accordance with the procedures set forth in the *Order Granting Motion Establishing Certain Notice, Case Management, and Administrative Procedures* [Docket No. 146] (the "Case Management Procedures"). The Debtors respectfully submit that, in view of the facts and circumstances, such notice is sufficient, and no other or further notice need be provided.

No Previous Request

45. Other than the Employee Compensation Motion, no prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other relief as is just and proper.

Dated: October 11, 2023
New York, New York

/s/ Lauren C. Doyle

Samuel A. Khalil, Esq.

Lauren C. Doyle, Esq.

Brian Kinney, Esq.

Edward R. Linden, Esq.

MILBANK LLP

55 Hudson Yards

New York, NY 10001

Telephone: (212) 530-5000

Facsimile: (212) 530-5219

Email: skhalil@milbank.com

ldoyle@milbank.com

bkinney@milbank.com

elinden@milbank.com

*Counsel to all Debtors and Debtors in Possession
other than the Participation Debtors*

/s/ Michael J. Edelman

Michael J. Edelman, Esq.

William W. Thorsness, Esq. (admitted *pro hac vice*)

VEDDER PRICE P.C.

1633 Broadway, 31st Floor

New York, NY 10019

Telephone: (212) 407-7700

Facsimile: (212) 407-7799

Email: mjedelman@vedderprice.com

wthorsness@vedderprice.com

Counsel to the Participation Debtors

Exhibit A

Proposed Order

Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b); (c) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) due and proper notice of the Motion and the Hearing was sufficient under the circumstances and that no other notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Compensation Order is amended as set forth herein.
3. The reference to the “Benefit Programs” is elided from paragraph 5 of the Compensation Order, and the Debtors are expressly authorized, but not directed, to pay Quarterly Bonuses to the Non-Insider Employees under the Quarterly Bonus Program, as such program may be modified, amended, or supplemented from time to time in the ordinary course of the Debtors’ business.
4. Except as otherwise modified herein, the terms of the Compensation Order shall continue in full force and effect. To the extent of any conflict between the terms of the Compensation Order and the terms of this Order, the terms of this Order shall govern.

[Remainder of page intentionally left blank]

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

New York, New York

Dated: _____, 2023

HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Del Genio Declaration

Samuel A. Khalil, Esq.
Lauren C. Doyle, Esq.
Brian Kinney, Esq.
Edward R. Linden, Esq.
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Michael J. Edelman, Esq.
William W. Thorsness, Esq. (admitted *pro hac vice*)
VEDDER PRICE P.C.
1633 Broadway, 31st Floor
New York, New York 10019
Telephone: (212) 407-7700
Facsimile: (212) 407-7799

Counsel to all Debtors and Debtors in Possession other than the Participation Debtors¹

Counsel to the Participation Debtors

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

In re:)	Chapter 11
Voyager Aviation Holdings, LLC <i>et al.</i> ,)	Case No. 23-11177 (JPM)
Debtors. ²)	(Joint Administration Requested)

DECLARATION OF ROBERT A. DEL GENIO, CHIEF RESTRUCTURING OFFICER OF VOYAGER AVIATION HOLDINGS, LLC, IN SUPPORT OF DEBTORS' MOTION TO AMEND THE COMPENSATION AND BENEFITS ORDER TO AUTHORIZE QUARTERLY BONUS PAYMENTS TO NON-INSIDER EMPLOYEES

I, Robert A. Del Genio, hereby declare as follows under penalty of perjury:

¹ "Participation Debtors" means, collectively, Aetios Aviation Leasing 1 Limited, Aetios Aviation Leasing 2 Limited, Panamera Aviation Leasing XII Designated Activity Company, and Panamera Aviation Leasing XIII Designated Activity Company.

² The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Voyager Aviation Holdings, LLC (8601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (9861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (5087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (2925); Voyager Aviation Aircraft Leasing, LLC (3865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (9652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.

1. I am the Chief Restructuring Officer of Voyager Aviation Holdings, LLC (“VAH” and, together with the other above-captioned debtors in possession, the “Debtors”) and have served in such capacity since July 25, 2023. I previously served in the role of the Debtors’ interim Chief Strategic Officer from June 3, 2022, to July 24, 2023, and have been working with the Debtors in the financial advisory capacity from 2021 through today.

2. I am a Senior Managing Director and the co-leader of the New York Metro Region for Corporate Finance and Restructuring at FTI Consulting, Inc. (“FTI”), which has its principal office located at 1166 Avenue of Americas 15th Floor New York, New York 10036. I am a resident of FTI’s New York City office.

3. I submit this declaration (the “Declaration”) in support of the relief sought in the *Debtors’ Motion to Amend the Compensation and Benefits Order to Authorize Quarterly Bonus Payments to Non-Insider Employees* (the “Motion”).³ I am authorized to submit this Declaration on behalf of the Debtors.

4. Based on my work with the Debtors, I am generally familiar with the Debtors’ business, financial condition, day-to-day operations, and books and records. I have been an invitee and a participant in meetings of the Company’s Board. Except as otherwise noted herein, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from my review of the Debtors’ business records and from other members of the Debtors’ senior management team, the Debtors’ employees and other advisors (including members of the FTI team) in the ordinary course of my responsibilities. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

³ Capitalized terms used but not otherwise defined herein have the respective meanings ascribed to such terms in the Motion.

5. The Debtors maintain a very small employee base, consisting of just 13 Employees.⁴ The Chief Financial Officer and the General Counsel constitute the “Management Team.” In addition, one Employee outside the Management Team serves on the board of directors of Voyager Aviation Management Ireland Designated Activity Company (“VAMI”), a Debtor. The remaining ten Non-Insider Employees focus on the Debtors’ relationships with customers (or prospective customers) and bank lenders, the technical maintenance of the Debtors’ aircraft (including managing technical support for the Debtors’ customers, oversight of redelivery of aircraft, and maintaining relationships with aircraft and engine manufacturers), and various other financial, accounting, contract and office support services.

6. The Non-Insider Employees perform various critical functions, including accounting, administrative support, accounts payable, and billing. The skills, knowledge and hard work of the Non-Insider Employees are critical to ensure that the Debtors continue to maximize value of their estates. The Non-Insider Employees are intimately familiar with the Debtors’ business processes and systems, possess unique skills, experience, knowledge, and understanding of the Debtors’ operations and infrastructure, and/or have developed relationships that are essential to the Debtors’ business. The Non-Insider Employees have already played a vital role in helping to achieve the Sale prepetition, stabilizing the Debtors’ operations upon commencement of these Chapter 11 Cases, and will be essential to the consummation of the Sale and the transfer of the Debtors’ assets to the purchaser. Indeed, while the Sale has been approved, a lot of hard work remains for the Non-Insider Employees to assist the Debtors with completing the aircraft transfers and novation of the customer leases.

⁴ Employees are supported by the Chief Restructuring Officer and Chief Accounting Officer (who are not Employees), and independent contractors.

7. The Non-Insider Employees are among the Debtors' most valuable assets and their skills are essential to the effective operation of the Debtors' business and critical to the success of the Chapter 11 Cases and completion of the Sale. Without the continued, uninterrupted services of the Non-Insider Employees, the Debtors' business operations would be halted, the administration of their estates would be severely disrupted, and the Sale would be jeopardized. It is due to the hard work of the Non-Insider Employees (among others) that the Debtors were able to maximize value of their estates. Indeed, the Non-Insider Employees are so critical to the Debtors operations that the purchaser of the Debtors' aircraft assets has agreed to make offers of employment to all Non-Insider Employees on the same terms and with the same compensation and benefits as they currently receive from the Debtors.

8. Their services are vital to the Debtors' business, particularly as there is no duplication of staffing for a given function and, with the challenges the Debtors have faced in recent years, they have not had the ability to quickly fill positions if employees choose to terminate their employment. The Debtors cannot easily replace the Non-Insider Employees without adversely affecting their operations, distracting the Management Team from the restructuring efforts, and risking consummation of the Sale.

9. The Non-Insider Employees report to the Chief Financial Officer, the General Counsel, and/or the Chief Restructuring Officer. Although certain of the Non-Insider Employees have titles such as "SVP" or "Head of" (and one Employee serves as a director of certain non-Debtor affiliates), none of them (a) is appointed or hired directly by the Board, (b) exercises managerial control over, or has responsibility for, the Debtors' operation as a whole, (c) directs the Debtors' overall corporate policy or governance, or (d) has any ability to control or direct the decisions of any Debtor in these Chapter 11 Cases. The Non-Insider Employees' titles are

designed to demonstrate the skill and expertise of the Non-Insider Employees, supporting the credibility they need in the industry to perform their role.

10. None of the Non-Insider Employees has discretionary decision-making authority on issues of policy, the overall direction of the company control or any material corporate transaction. Rather, the scope of the authority of each of them is limited and subject to oversight and approval by the Management Team and/or the CRO. None of the Non-Insider Employees was appointed by the Board. To provide further detail on the vital role each Non-Insider Employee has and to show that none of the Non-Insider Employees makes ultimate decisions without reporting to the Management Team, a summary of the Non-Insider Employees' responsibilities and reporting is attached to this Declaration as **Exhibit 1**.

11. At the time the Company determined to pursue a potential sale of its business, the Board recognized that the Non-Insider Employees might view such a sale as reason to leave the Debtors' employ. Accordingly, the Company converted its annual bonus program to a quarterly payment plan to ensure that the Non-Insider Employees understood that the Company recognized their value and that they would continue to receive at least the same compensation as they had in the prior year, even if their jobs were eliminated due to a mid-year sale.

12. The Quarterly Bonus Program provides Employees with an annual bonus (payable quarterly) at a fixed percentage that ranges from 15% to 100% of their annual compensation. The Debtors pay approximately \$195,000 in Quarterly Bonuses to Non-Insider Employees each quarter. The Quarterly Bonuses are an essential component of the Non-Insider Employees' compensation. The next payment to the Non-Insider Employees under the Quarterly Bonus Program is due on October 15, 2023.

13. Payments under the Quarterly Bonus Program are made over the four quarter of the year and are subject to claw back if the recipient voluntarily resigns or is terminated for cause.⁵ The program was designed to compensate Employees for their hard work, ensure that they received that compensation during regular intervals during the year pending a possible strategic transaction, and mitigate against the risk of losing any members of the Debtors' essential workforce during this critical time. As a result, the Non-Insider Employees have continued to sustain the Debtors' business during these Chapter 11 Cases and to complete the work required to see the Debtors through the Sale process.

14. The cost of the Quarterly Bonus Program is fair and reasonable in the context of the Debtors' assets and liabilities. The cost of the Quarterly Bonus Program for the Non-Insider Employees is less than \$200,000 per quarter. The success of the Sale is dependent on the retention of the Non-Insider Employees. Without proper compensation of the Non-Insider Employees there is no guarantee that the Debtors will be able to successfully consummate the Sale, which is expected to bring more than \$800 million of value into the estates. Thus, I believe that the cost of the Quarterly Bonus Program would greatly outweigh the potential negative consequences of failing to honor their obligations to the Non-Insider Employees thereunder.

15. The Quarterly Bonus Program does not discriminate among Employees. All Non-Insider Employees are eligible to receive Quarterly Bonuses.

16. The Quarterly Bonus Program is consistent with the Debtors' historical practice as the Debtors routinely used similar programs prior to the commencement of these cases. In my

⁵ The quarterly bonuses are paid 25% on each of April 15, 2023, July 15, 2023, October 15, 2023, and January 15, 2024. If a Non-Insider Employee voluntarily resigns or is terminated for cause prior to June 30, 2023, September 30, 2023, December 31, 2023, or March 31, 2024 (as applicable with respect to each installment, in order), then they must repay the corresponding bonus payment (less any withholding taxes).

experience, it is common for businesses of comparable size to utilize similar awards to drive performance and retain employees during a sale of the company.

17. The Debtors performed appropriate due diligence to determine the need and appropriateness of the Quarterly Bonus Program. Such diligence involved a realistic analysis of both the Debtors' business needs and the type of performance that the Debtors sought to incentivize. The Debtors' due diligence was informed and supplemented with independent analysis by their independent prepetition advisors and the oversight and approval of the Board.

18. I believe that the relief requested in the Motion is (i) critical to the Debtors' ability to operate effectively and to preserve the value of their estates and (ii) in the best interests of the Debtors, their estates, and their creditors.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 11, 2023
New York, New York

By: /s/ Robert A. Del Genio
Name: Robert A. Del Genio

Exhibit 1 to Del Genio Declaration

Non-Insider Employees

Non-Insider Employees

Title	Entity	Responsibility	Reports To
Senior Accountant	VAH	<ul style="list-style-type: none"> - Maintaining accounting books and records at Voyager Aviation Holdings, LLC; - Coordinating with external tax advisors regarding tax matters; and - Coordinating administration of payroll for employees of Voyager Aviation Holdings, LLC. 	Chief Financial Officer
Vice President Commercial	VAH	<ul style="list-style-type: none"> - Establishing and maintaining commercial relationships with customers and prospective customers in Asia; and - Assisting with completion of lease transactions and sales transactions. 	Senior Vice President of Commercial
Head of Cash Management	VAH	<ul style="list-style-type: none"> - Administering cash management processes and banking relationships. 	Chief Financial Officer
Head of Strategic Finance	VAH	<ul style="list-style-type: none"> - Maintaining banking relationships; - Negotiating terms of financing transactions and coordinating with financial advisors; and - Managing company budget and financial planning activities. 	Chief Financial Officer
Senior Vice President Technical	VAH	<ul style="list-style-type: none"> - Administering of technical aircraft matters, including oversight of external third-party technical support providers; - Coordinating with the technical teams for customers with respect to negotiating lease transactions; - Overseeing of redelivery of aircraft at termination of lease transactions; and - Maintaining relationships with aircraft and engine manufacturers and service providers globally. 	Chief Financial Officer
Contracts Manager	VAH	<ul style="list-style-type: none"> - Managing contracts, including interfacing with customers to receive lessee customers' annual financial statements, annual renewals of letters of credit and insurance certificates; and 	General Counsel/Chief Compliance Officer

Title	Entity	Responsibility	Reports To
		<ul style="list-style-type: none"> - Managing administrative matters for internal corporate organizational structure and responding to third party “know-your-customer”/due diligence inquiries with respect to Voyager Aviation Holdings, LLC. 	
Senior Vice President Commercial	VAMI	<ul style="list-style-type: none"> - Establishing and maintaining commercial relationships with customers and prospective customers, as well as aircraft and engine manufacturers and service providers globally; and - Supporting execution of lease transactions and sales transactions, including coordination with technical. 	Chief Financial Officer; General Counsel; Chief Restructuring Officer
General Manager, Head of Accounting and Operations Ireland	VAMI	<ul style="list-style-type: none"> - Accounting and operations in Ireland, including completion of financial statements for Voyager Aviation Management Ireland DAC and subsidiary entities, approval of bank transfers for the accounts payable function, and overall management of the Dublin office. 	Chief Financial Officer
Officer Manager	VAMI	<ul style="list-style-type: none"> - Daily administrative management of the Dublin office, including overseeing expense reporting, coordinating between the Stamford and Dublin offices, assisting with office needs of employees and supporting accounts payable functions. 	General Manager, Head of Accounting and Operations Ireland
Assistant Vice President Risk & Business Development	VAMI	<ul style="list-style-type: none"> - Underwriting functions and risk analysis; and - Assisting with establishing relevant pricing for lessee customers. 	Chief Financial Officer