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in Possession*

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-____ (____)

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I)
AUTHORIZING THE DEBTOR TO (A) PAY CERTAIN EMPLOYEE WAGES AND
OTHER COMPENSATION AND RELATED OBLIGATIONS AND, (B) MAINTAIN
AND CONTINUE EMPLOYEE BENEFITS AND PROGRAMS IN THE ORDINARY
COURSE, AND (II) AUTHORIZING AND DIRECTING APPLICABLE BANKS TO
HONOR ALL CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Philippine Airlines, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**” or “**PAL**,” and collectively with the Debtor’s non-debtor affiliates, the “**Airline**”), hereby moves (the “**Motion**”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Interim Order**” and the “**Final Order**,” respectively, and collectively, the “**Proposed Orders**”), granting the relief requested below. In support of the Motion, the Debtor relies upon and incorporates by reference the *Declaration of*

¹ The Debtor in this chapter 11 case, along with its registration number in the Philippines, is Philippine Airlines, Inc., Philippine Securities and Exchange Commission Registration No. PW 37. The Debtor’s corporate headquarters is located at PNB Financial Center, President Diosdado Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila, Philippines.



Nilo Thaddeus Rodriguez in Support of First Day Motions and Applications (the “**First Day Declaration**”), which was filed with the Court on the Petition Date (as defined herein). In further support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York (the “**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 Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the 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.

2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 363, 507, and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”).

Background

4. On September 3, 2021 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or statutory committee has been appointed in this chapter 11 case (the “**Chapter 11 Case**”).

5. The Debtor and its affiliates are the largest airline group in the Philippines and the Debtor is the national flag carrier of the Philippines. Its principal activity is to provide air transportation for passengers and cargo within and outside the Philippines. The Debtor is among the oldest airlines in the Asia Pacific region, having been founded in February 1941. With approximately 4,500 employees and over \$3 billion in annual gross revenue prior to the COVID-19 pandemic, the Debtor is the leading airline in the Philippines airline market.

6. In 2020, the Debtor was confronted with an extraordinary set of circumstances and flight disruptions induced by the COVID-19 pandemic. The COVID-19 crisis has had a catastrophic impact upon the aviation industry, causing major airlines to effectively halt many business operations. For major airlines, such as PAL, the dramatic reduction in worldwide air travel caused significant balance sheet losses and created intractable challenges to meeting existing payment obligations.

7. In response to these unprecedented circumstances, PAL undertook a number of cost cutting measures and began discussions with key stakeholders in the hopes of mapping out a healthy future for the Airline. Those discussions, which spanned many months and involved all major stakeholders and their retained professionals, culminated in several restructuring support agreements (the “**RSAs**”) with substantially all of its aircraft lessors and lenders outlining the material terms for a proposed chapter 11 plan of reorganization (the “**Proposed Plan**”). The RSAs and the Proposed Plan contemplate (a) the reduction of the Debtor’s aircraft related obligations by approximately \$2.1 billion, (b) a \$505 million infusion of working capital to fund the Debtor’s ongoing operations during the Chapter 11 Case and upon emergence from its primary shareholder (the “**DIP Lender**”), (c) optimizing the Debtor’s fleet size, composition, and ownership costs as required by the new market, (d) maintaining and enhancing the Debtor’s

key contracts and business partners to strengthen the Debtor's viability during the pending COVID-19 pandemic and beyond, and (e) obtaining commitments for a \$150 million exit facility from new investors to ensure PAL has adequate liquidity and runway to complete its restructuring.

8. The Debtor likewise engaged in good faith negotiations with its other critical creditors, including its primary original equipment manufacturers ("OEM") and maintenance, repair, and overhaul service providers ("MRO"), to ensure that the Debtor continues to obtain the benefit of such critical goods and services. In addition, the OEMs and MROs have agreed to support the Proposed Plan by entering into RSAs, thereby providing additional certainty and predictability to the Debtor's restructuring and Chapter 11 Case.

9. Prior to the Debtor's Chapter 11 Case, the Debtor also (a) engaged in numerous good faith negotiations with a large number of its ordinary course vendors and suppliers, resulting in agreements to extend payment terms to provide the Debtor with additional breathing room and runway to assist it through the COVID-19 pandemic and (b) undertook a resizing of its operations, including the reduction of its workforce by 32%, to meet expected post-COVID-19 operational needs.

10. Additional information regarding the events leading up to the Petition Date is set forth in the First Day Declaration and is incorporated herein by reference.

Relief Requested

11. By this Motion, the Debtor requests the entry of an order pursuant to sections 105(a), 363, 507, and 541 of the Bankruptcy Code authorizing, but not directing, the Debtor to pay and honor certain prepetition employment-related claims, including (a) wages, salaries, and other compensation, (b) federal, state, and foreign withholding taxes and other amounts withheld (including, garnishments, employees' share of insurance premiums, taxes, and 401(k)

contributions), (c) reimbursable expenses, (d) health benefits, retirement, and pension benefits, insurance benefits and workers' compensation benefits, (e) select time, time-off, and other leaves mandated under labor regulations and union contracts, and (f) all other benefits that the Debtor has historically provided to Employees (as defined below) in the ordinary course of business (collectively, as more fully described below and together with attendant costs and expenses, the "**Wages and Benefits**"). In addition, the Debtor intends to continue to exercise its rights to modify or discontinue any of the Wages and Benefits, or to implement new Wages and Benefits in the ordinary course of business during the Chapter 11 Case without the need for further Court approval.

The Debtor's Workforce

12. As of the Petition Date, the Debtor's workforce consists of approximately 4,500 employees (the "**Employees**")² including pilots, flight attendants, dispatchers, mechanics, aviation maintenance support personnel, supervisors, managers, administrative support staff, sales staff, and other personnel. Approximately 96% of the Employees are based in the Philippines, with the other 4% of employees being spread across 21 countries where the Debtor does business, including the United States.

13. Of the Employees, approximately 52% are represented by a union or other collective bargaining structure (the "**Union Employees**"). The Union Employees are represented by the (a) Flight Attendants' and Stewards' Association of the Philippines ("FASAP") representing 38% of Debtor's Employees; (b) Philippine Airlines Employees Association ("PALEA") representing 12% of Debtor's Employees; (c) International Association of Machinists and Aerospace Workers ("IAMAW") representing 0.2% of Debtor's Employees; (d)

² Additional staff are employed by the Debtor's international affiliates that have not sought relief under chapter 11.

Japan Labor Union (“JLU”) representing 1.7% of Debtor’s Employees; and (e) Singapore Manual and Mercantile Workers’ Union (“SMMWU”) representing 0.2% of Debtor’s Employees (collectively, the “Unions”). The terms of employment for the Union Employees are governed by collective bargaining agreements (“CBAs”) between the Debtor and the applicable Union.

14. The Employees perform a variety of critical functions for the Debtor’s business. The Employees’ skills, their specialized knowledge of the Debtor’s complex infrastructure, aircraft, industry, and operations, as well as their relationships with vendors, customers, and other third parties, are essential to the value of the Debtor’s assets and business. Without the support and dedication of these employees to ensure the continued operation of its business, the Debtor will be unable to continue its efforts to expand its services that were temporarily disrupted by the COVID-19 pandemic, and will ultimately be unable to effectively reorganize by providing the services requested by its customers.

15. The Employees perform a variety of critical functions on behalf of the Debtor and are essential to the effective reorganization of the Debtor’s business and to implement the restructuring contemplated by the RSAs. Accordingly, with the commencement of the Chapter 11 Case that has the support of the majority of the Debtor’s aircraft lessors and lenders, it is critical for the Debtor to obtain Court approval of the relief sought herein in order to maintain the Employees’ morale and the continued operation of the business to ensure that there is no interruption to the payment of wages, salaries, and benefits to the Employees.

Wages and Related Withholdings and Reimbursements

16. From April 1, 2021 to June 30, 2021, the Debtor’s gross monthly payroll, including the Debtor’s contributions to Employee Benefits (as defined below), was approximately \$9.5 million per month. These payments comprise an average of:

- Approximately \$7.1 million in contractual wages and salaries;
- Approximately \$1.6 million in variable cash payments, including performance bonuses, overtime, contractual bonuses, and other short-term cash incentives;
- Approximately \$440,000 in contributions to Employee Benefits; and
- Approximately \$329,000 in reimbursable expenses.

A. Employee Wages

17. The majority of the Employees receive contractual wages and salaries, bonuses, and other short-term cash incentives, overtime payments, and other monthly cash compensation (collectively, the “**Employee Wages**”) through direct deposit, although some Employees receive paper checks. In the ordinary course of business, Employee Wages are paid at intervals and on dates and/or days that vary by jurisdiction, as set forth below:

Country	Frequency of Payment	Regular Pay Date Within Month
Philippines	semi-monthly	15 th and 30 th /31 st of the month
Australia	monthly	5 th or 12 th of the month
Cambodia	monthly	15 th of the month
Canada	semi-monthly	15 th and the 30 th of the month
China	monthly	25 th of the month CAN 28 th of the month for others
Guam	semi-monthly	6 th and 20 th of the month
Hong Kong	monthly	14 th - 15 th of the month

Country	Frequency of Payment	Regular Pay Date Within Month
Indonesia	monthly	25 th of the month
Japan	monthly	25 th of the month
Macau	monthly	29 th of the month
Malaysia	monthly	15 th of the month
New Zealand	monthly	12 th -15 th of the month
Papua New Guinea	monthly	30 th of the month
Qatar	monthly	29 th or 30 th of the month
Saudi Arabia	monthly	25 th - 28 th of the month
Singapore	monthly	18 th - 20 th of the month
Taiwan	monthly	25 th of the month
Thailand	monthly	20 th -- 25 th of the month
United Arab Emirates	monthly	18 th of the month
United Kingdom	monthly	25 th of the month
USA	semi-monthly	15 th and the 30 th of the month

Country	Frequency of Payment	Regular Pay Date Within Month
Vietnam	monthly	18 th - 20 th of the month

18. The Debtor estimates that approximately \$5.9 million in prepetition Employee Wages remain unpaid by the Debtor as of the Petition Date (the “**Unpaid Compensation**”).³ The Unpaid Compensation represents Employee Wages earned during or related to prepetition periods, but which were scheduled to be paid in the ordinary course (as indicated in the above chart) on a date later than the Petition Date, as well as certain prepetition employee obligations that must be paid after the Petition Date under applicable local law. In certain jurisdictions (including the Philippines), the Debtor is required to pay certain bonuses on specific dates. Under Philippine law, for example, labor laws mandate the payment of a yearly bonus referred to as the 13th month pay. As has been the historical company practice, this bonus should have been paid in May of 2021; however, the payment was rescheduled due to the Debtor’s financial hardships and the COVID-19 pandemic. The Employees have vested rights in the 13th month pay and the Debtor is obligated by law to pay this bonus, thus it is not comparable to a purely discretionary bonus. In total, the Debtor expects the 13th month pay to be approximately \$7.1 million.

19. As of the Petition Date, the Debtor believes that all Employees would have a priority claim of less than \$13,650 pursuant to section 507(a)(4) of the Bankruptcy Code with respect to their earned Unpaid Compensation. Accordingly, such amounts would ultimately have to be paid to the Employees in full prior to the payment of general unsecured claims under

³ The Debtor last paid most of its Employees on August 31, 2021.

the Proposed Plan. The Debtor seeks authority to pay any Unpaid Compensation as it comes due in the ordinary course of business and consistent with past practices, and not wait until confirmation to make such payments in order to maintain the Employees' morale. The Debtor further requests authority, but not direction, to continue to make Employee Wages on a postpetition basis in the ordinary course of business.

B. Deductions and Withholdings

20. During each applicable pay period, the Debtor or its payroll processors, routinely deduct certain amounts from the Employees' paychecks, including certain pre-tax and after-tax deductions payable to certain of the benefit plans discussed herein, such as an Employee's share of health care benefits, insurance premiums, 401(k) and retirement contributions, flexible spending account contributions, commuter benefits contributions, legally ordered deductions, union dues, and other miscellaneous deductions (collectively, the "**Employee Deductions**"). These amounts are then remitted to the appropriate private third-party or state, federal, local, or non-U.S. government authority. On average, the Debtor has historically deducted a total of approximately \$415,000 in the aggregate from the Employees' paychecks per pay period. The Debtor believes that approximately \$340,000 in prepetition Employee Deductions have been deducted from the Employee Wages but have not yet been remitted to the appropriate authorities. Moreover, the Debtor has yet to remit to the Philippines Bureau of Internal Revenue the income tax it withheld from its employees for the year 2020 in the amount of approximately \$5 million.

21. Furthermore, the Debtor is required by law to withhold from the Employee Wages amounts related to federal, state, local, and foreign income taxes, social security and Medicare taxes, and other taxes imposed by applicable law for remittance to the appropriate

federal, state, local, or non-U.S. taxing authority (the “**Payroll Taxes**”). On average, the Debtor has historically withheld and remitted a total of approximately \$750,000 in Payroll Taxes per payroll period. The Debtor believes that approximately \$1.5 million in prepetition Payroll Taxes have been deducted from Employees’ compensation but have not yet been remitted.

22. Due to the commencement of this Chapter 11 Case or other miscellaneous omissions, there may be Employee Deductions or Payroll Taxes that were not forwarded to the appropriate third-party recipients prior to the Petition Date. Accordingly, the Debtor seeks entry of a final order authorizing, but not directing, them to continue to forward these prepetition Employee Deductions and Payroll Taxes, through payroll processors or directly, to the applicable third-party recipients on a postpetition basis, as routinely done prior to the Petition Date. As discussed more fully herein, the Debtor believes that under section 541(d) the Employee Deductions and Payroll Taxes are held in trust, and are not the property of the Debtor’s estate and, therefore, such funds are not available for general distribution to the Debtor’s creditors.

C. Payment of Reimbursable Expenses

23. Prior to the Petition Date, and in the ordinary course of business, the Debtor reimbursed certain Employees for certain reasonable and customary expenses incurred on behalf of the Debtor in the scope of their employment in accordance with Internal Revenue Service (“**IRS**”) regulations and other applicable foreign laws and regulations (the “**Reimbursable Expenses**”).⁴

⁴ From time to time, in the ordinary course, the Debtor has disbursed bulk funds to certain Employees (the “**Managers**”) to manage as petty cash. The Managers administer cash advances to crewmembers traveling internationally, as well as other minor expenditures or emergency uses. Employees are required to submit receipts (or other proof of expenditure) in order to obtain any funds from the Managers’ bank accounts. Because of the *de minimis* nature of such programs and that the Debtor considers such funds disbursed and spent upon payment to the Managers, the Debtor does not believe it needs Court approval with respect to prepetition or postpetition amounts disbursed from pre-petition payments to the Managers’ accounts for the purpose of petty cash.

24. A Reimbursable Expense is an expense incurred by an Employee in the performance of his/her duties that is deemed to be necessary to the performance of his/her job, and is reasonable. The Reimbursable Expenses are paid-for expenses such as travels, meals, relocation expenses, tuition reimbursement, accommodation, parking, automobile mileage, and other business-related expenses that are paid up front by the Employees.

25. The Debtor generally prepays travel expenses directly on behalf of the Employees or in the form of a per diem cash advance, although in the U.S. certain Employees also use a company credit card to charge for business-related expenses. Accordingly, the amount that the Debtor pays in Reimbursable Expenses is generally *de minimis* relative to other Employee expenses. This is especially true given the reduction in flights necessitated by the COVID-19 pandemic. The Debtor estimates that the total amount of unpaid prepetition Reimbursable Expenses is approximately \$447,000.

26. The Reimbursable Expenses were all incurred on the Debtor's behalf and with the understanding that they would be reimbursed. Accordingly, to avoid harming individuals who incurred Reimbursable Expenses while performing their duties, the Debtor seeks authority, in its sole discretion, but not direction, to (a) pay any outstanding prepetition Reimbursable Expenses and (b) continue during the course of this Chapter 11 Case to pay the Reimbursable Expenses in accordance with prepetition practices.

Employee Benefits

27. In the ordinary course of business, the Debtor provides Employees with a number of benefits, including:⁵ (a) health, dental, and vision programs and insurance; (b) retirement and

⁵ Note that because of the international nature of the Debtor's business and it having employees in a number of countries around the world, some of the Employee Benefits listed here are not applicable to all employees in all jurisdictions.

pension plans; (c) unemployment insurance; (d) workers' compensation (e) disability insurance; (f) life and accident insurance; (g) paid time-off and leaves; (h) severance benefits; and (i) other Employee benefits (collectively, the "**Employee Benefits**"). These Employee Benefits are provided through employer and third-party sponsored contributory and non-contributory benefit plans and voluntary insurance coverage. On average, the Debtor makes a collective monthly contribution of approximately \$497,000 on account of the Employee Benefits. Failure to maintain the Employee Benefits in certain of the various jurisdictions in which the Debtor conducts business could result in the institution of administrative or legal proceedings and material fines against the Debtor and its officers and directors. The Debtor believes that approximately \$414,000 in prepetition contributions to the Employee Benefits remain unpaid by the Debtor as of the Petition Date.

A. Healthcare Programs and Insurance Benefits

28. The Debtor has various plans and policies pursuant to which Employees are provided with medical, dental, and vision benefits depending on the jurisdiction where the Debtor operates (the "**Healthcare Plans**"). The Debtor estimates the average monthly sum of contributions made by the Debtor to the Healthcare Plans is approximately \$47,000. The Debtor estimates that the amount of unpaid prepetition contributions to the Healthcare Plans is approximately \$53,000.

29. By this Motion, the Debtor seeks authority in its sole discretion to continue the Healthcare Plans in the ordinary course of business and pay any prepetition expenses or other amounts related thereto, including any claims incurred before the Petition Date but reported after the Petition Date.

B. Retirement and Pension Plans

30. The Debtor maintains a qualified defined contribution plan for all U.S.-based Employees that meet the requirements of section 401(a) and 401(k) of the Internal Revenue Code (the “**401(k) Plan**”). Under the terms of the 401(k) Plan, eligible Employees can contribute a percentage of their compensation, through payroll deductions, both on a pre-tax and an after-tax basis, up to the limits imposed on those contributions under the Internal Revenue Code. The Debtor estimates its monthly average Employee contribution to the 401(k) Plan to be approximately \$700.

31. In certain non-U.S. jurisdictions, the Debtor makes contributions to social security and pension funds (the “**Foreign Retirement Plans**”). The amount that the Debtor is required to contribute varies by jurisdiction. For example, the Debtor is required to contribute a percentage of an Employee’s monthly salary to a Foreign Retirement Plan as follows –

1. New Zealand – 3%	2. Dammam – 2-7%
3. Hong Kong – 5%	4. Riyadh – 2-20%
5. Macau – MOP 30	6. Malaysia – 12%
7. Guangzhou – 14%	8. Beijing – 16%
9. Ho Chi Minh – 17.5%	10. Shanghai – 16%
11. Singapore – 17%	12. Xiamen – 12%
13. London – 3.5%	14. Jinjang – 16%
15. Guam – 7.65%	16. Canada – 5.45%

The Debtor estimates that the average total monthly sum made by the Debtor to the Foreign Retirement Plans is approximately \$29,000. The Debtor estimates that the total amount of

unpaid prepetition contributions as of the Petition Date to the Foreign Retirement Plans is approximately \$34,000.

32. Additionally, for certain Employees who have been employed by the Debtor for at least 20 years upon their separation, the Debtor offers a lifetime annual travel privilege (the “**Special Retirement Benefit**”). Because the travel tickets related to the Special Retirement Benefit are subject to space availability, the Special Retirement Benefit does not result in PAL incurring any additional costs, other than administrative expenses.

33. By this Motion, the Debtor seeks authority in its sole discretion to continue the 401(k) Plan and Foreign Retirement Plans and to make any payments attributable to the Foreign Retirement Plans, including any that accrued prepetition in the ordinary course of business. The Debtor also seeks authority to continue to administer the Special Retirement Benefit and to incur the *de minimis* administrative costs associated with it doing so.

C. Unemployment

34. In certain jurisdictions, including the U.S., the Debtor is required to make direct contributions to unemployment funds (the “**Unemployment Contributions**”). The Debtor estimates that the average monthly sum paid in respect of Unemployment Contributions is approximately \$1,900. The Debtor estimates that the total amount of unpaid prepetition Unemployment Contributions as of the Petition Date is approximately \$1,700.

35. By this Motion, the Debtor seeks authority in its sole discretion to continue the Unemployment Contributions and make any payments attributable to the Unemployment Contributions, including any that accrued prepetition in the ordinary course of business.

D. Workers' Compensation

36. The Debtor provides and contributes to workers' compensation plans to all Employees, both in the U.S. and in foreign jurisdictions (the "**Workers' Compensation Plans**"). These benefits are administered by both private and public insurers to provide Employees with workers' compensation coverage for claims arising from or related to accidents that occurred during their employment with the Debtor. The Debtor estimates that the average monthly sum made by the Debtor to the Workers' Compensation Plan is approximately \$600. The Debtor estimates that the total amount of unpaid prepetition contributions as of the Petition Date to the Workers' Compensation Plans is approximately \$750.

37. By this Motion, the Debtor seeks authority in its sole discretion to continue the Workers' Compensation Plan and make any payments attributable to the Workers' Compensation Plan, including any the accrued prepetition in the ordinary course of business.

E. Disability Insurance

38. In certain jurisdictions, the Debtor is statutorily required to make contributions to disability insurance plans (the "**Disability Plans**"). The Debtor estimates that the average monthly sum made by the Debtor to the Disability Plans is less than \$400 a month. The Debtor estimates that the total amount of unpaid prepetition contributions to the Disability Plans is approximately \$200.

39. By this Motion, the Debtor seeks in its sole discretion to continue the Disability Plans and make any payments attributable to the Disability Plans, including any that accrued prepetition in the ordinary course of business.

F. Life and Accident Insurance

40. All of the Debtor's Philippine-based Employees are covered by life insurance and accident insurance, which the Debtor obtains on their behalf ("**Life and Accident Insurance**") from Allianz PNB Life and PNB General Insurers, Co., Inc., respectively. The Debtor's Employees in the U.S., Canada, Hong Kong, Taipei, Japan, and Qatar are also covered by group life insurance. The Debtor estimates that the average monthly sum made by the Debtor with respect to Life and Accident Insurance is approximately \$90,000. The Debtor estimates that as of the Petition Date the total amount of unpaid prepetition amounts due in relation to Life and Accident Insurance is approximately \$260,000.

41. By this Motion, the Debtor seeks in its sole discretion to continue to obtain Life and Accident Insurance and to any payments attributable thereto, including any that accrued prepetition in the ordinary course of business.

G. Paid Time-Off and Leaves

42. Pursuant to law, company policy and various collective bargaining agreements with its Employees, all Employees are entitled to paid time-off (the "**Vacation Obligations**"). Accrual of vacation days is based on years of services and Employees accrue a specified number of vacation days or fraction of days for each month of active service. The amount of vacation days, and the treatment of those days to the extent not used, depends on the local laws and regulations. For example, in the Philippines, vacation leaves and/or sick leaves granted by the employer as a company practice over a long period of time ripens into vested rights in favor of employees. Thus, the Debtor's existing company policy now entitles the ground employees to 15 to 20 days of vacation leave and pilots and cabin attendants to 21 to 27 days of vacation leaves. In the U.S., employees with more than a year of service are entitled to 10 to 25 days of

vacation leave, depending on their length of service. In Canada, Japan, Australia, China, Hong Kong Indonesia, New Zealand, and other jurisdictions there are similar requirements.

43. The Debtor estimates that, as of June of this year, it has approximately \$14.6 million in prepetition accrued Vacation Obligations. The Vacation Obligations will continue to accrue postpetition for use in the ordinary course of business.

44. By this Motion, the Debtor seeks authority in its sole discretion to continue to honor its Vacation Obligations and make any payment attributable to the Vacation Obligations, including any that accrued prepetition in the ordinary course of business.

45. The Debtor also offers paid sick leave to certain of its Employees (“**Paid Sick Leave**”). For example, in the Philippines, Employees are entitled to a minimum of 15 days to a maximum of 21 days Paid Sick Leave annually based on tenure, which can be rolled over to future years. PAL estimates that it has approximately \$5.9 million of accrued Paid Sick Leave obligations calculated based on the Debtor’s policy that unused Paid Sick Leave are commutable to cash upon separation or retirement. Additionally, it is the Debtor’s policy to convert to cash any unused Paid Sick Leaves in excess of 75 days every year. The Debtor estimates that it has approximately \$900,000 in unpaid and unused Paid Sick Leave in relation to this policy.

46. By this Motion, the Debtor seeks authority in its sole discretion to continue Paid Sick Leave and make any payments attributable to Paid Sick Leave, including any that accrued prepetition in the ordinary course of business. As noted earlier, the Debtor does not expect to make cash payments during the Chapter 11 Case for the full amount under the Paid Sick Leave policy.

H. Global Staff Travel Program and Other Employee Benefits

47. The Debtor maintains a program offering free and discounted airline tickets to all Employees (the “**Global Staff Travel Program**”), which is widely used by all of the Debtor’s Employees. It is difficult for the Debtor to determine the exact amount of unused tickets outstanding and those that can be issued to its Employees for the periods prior to the Petition Date.

48. By this Motion, the Debtor seeks authority to maintain the Global Staff Travel Program in the ordinary course of business consistent with its prepetition practices, including for the tickets that relate to prepetition periods.

49. Under the laws of the various foreign jurisdictions in which the Debtor operates, Employees in such jurisdictions may be entitled to various forms of compensation and benefits, certain payroll or similar taxes may be required to be paid or withheld (the “**Other Non-U.S. Benefits**”). It is difficult for the Debtor to quantify the exact value of these benefits or the taxes paid or withheld in connection with any such benefits, but believe them to be *de minimis* in the context of the Debtor’s Employee Wages and Benefits.

50. By this Motion, the Debtor seeks authority to continue providing the Other Non-U.S. Benefits in the ordinary course of its business.

I. Payroll Administrator and Other Benefit Providers

51. The Debtor typically processes its own payroll, with certain exceptions, including for payment of U.S. Employees and certain Employees in Australia, Canada, China, Japan, Malaysia, New Zealand, the United Kingdom and Vietnam, where the Debtor utilizes the services of a number of third-party service providers, including Automatic Data Processing, Inc. (ADP), Xiamen Foreign Service Center., TMF Administrative Services Malaysia Sdn Bhd,

KPMG Private Enterprise and Aviation Labor Supply and Import-Export Joint Stock Company (ALSIMEXICO), to facilitate administration of the Wages and Benefits. For example, ADP's responsibilities include processing payroll and transferring funds collected from United States payroll taxes and deductions to the applicable third-party recipients. In connection with the services to these providers, the Debtor pays a total of approximately \$2,500 per month (the "**Payroll Fees**"). Services provided by these third-party service providers are crucial to the functioning of the Debtor's payroll system such that the Debtor requests permission to pay any unpaid prepetition Payroll Fees.⁶

52. The Debtor also utilizes the services of various other benefit providers to administer benefits for its Employees. In connection with these services, the Debtor pays such benefit providers certain fees. As the services provided by such benefit providers are crucial to the functioning of the Debtor's benefit programs, the Debtor requests permission to pay any prepetition related fees or expenses owed to such benefit providers.

Basis for Relief

53. The Debtor's ability to successfully operate and implement the restructuring contemplated by the RSAs depends on the services and dedication of the thousands of individuals that make up its workforce. Thus, it is essential to assure the Employees that the Debtor will honor the Wages and Benefits and continue and maintain the Employee Benefits in the ordinary course of business throughout the Chapter 11 Case. A failure to promptly do so may create concern and discontent among the Employees and could hinder the Debtor in pursuing new candidates. Loss of even a few key personnel could immediately and irreparably

⁶ The Debtor is seeking authorization to continue these agreements for the time being in the ordinary course of business, but in an abundance of caution have chosen to disclose this information in this Motion. Nothing herein seeks to assume, nor should this be construed as an assumption, of any of these or other contracts at this time.

harm the Debtor's ability to maintain operations to the detriment of all interested parties. Moreover, particularly given the specialized skills of many of the Debtor's Employees, it is important that they continue to retain these Employees in order to rely on those Employees' skills and experience to resume full operations as soon as possible. Therefore, pursuant to sections 105(a), 363, 507, and 541 of the Bankruptcy Code, the Debtor seeks authority to pay the Wages and Benefits, in its discretion, and to maintain and continue the Employee Benefits, in its discretion, in each case consistent with the Debtor's ordinary course practices. This relief is necessary to retain the workforce, ensure compliance with local laws abroad and ensure that the Debtor's business operations seamlessly transition into Chapter 11.

A. Certain Wages and Benefits are Entitled to Priority Treatment

54. Section 507(a)(4)(A) of the Bankruptcy Code grants priority status to up to \$13,650 for each employee's claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date. 11 U.S.C. § 507(a)(4)(A). Similarly, section 507(a)(5) of the Bankruptcy Code grants priority to contributions to employee benefit plans based on the number of eligible employees and subject to adjustments to account for amounts paid under section 507(a)(4). 11 U.S.C. § 507(a)(5).

55. The Debtor believes that all of the Wages and Benefits relating to the period prior to the Petition Date fall within the priority claim amounts under sections 507(a)(4) and (5) of the Bankruptcy Code. Indeed, the Debtor submits that payment of the Wages and Benefits at this time enhances value for the benefit of the Debtor and all interested parties by retaining the workforce. The Debtor submits, however, that to the extent any Employee is owed more than \$13,650 for the Wages and Benefits, payment of those amounts is necessary and appropriate and is authorized under sections 363(b) and 105(a) of the Bankruptcy Code.

56. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may “after notice and a 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). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application); *see also In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (standard for determining a section 363(b) motion is whether the debtor has a “good business reason” for the requested relief). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

57. Consistent with a debtor’s fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (accepting debtor’s argument that payment of employee wage claims was “critical . . . in order to preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale,” and finding that the debtor had “clearly demonstrated sound business reasons to justify such payments”).

58. The Debtor already pays the Employee Wages in the ordinary course of business, as permitted by section 363(c) of the Bankruptcy Code. “The Bankruptcy Code is designed to allow a debtor-in-possession the flexibility to engage in ordinary transactions without unneeded oversight by creditors or the court, while at the same time giving creditors an opportunity to contest those transactions that are not ordinary.” *In re Dana Corp.*, 358 B.R. 567, 580 (Bankr. S.D.N.Y. 2006). However, to the extent that the Court finds that approval is necessary, and out of an abundance of caution, the Debtor requests that the Court grant the relief requested herein and enter an order authorizing them to pay the Employee Wages, consistent with their compensation, paid time-off, and other benefit policies and plans, and to permit, but not require, the Debtor, in its discretion, to maintain and continue the Employee Benefits for its Employees as those practices, programs, policies, and plans were in effect as of the Petition Date, as such may be modified, terminated, amended, or supplemented from time to time.

59. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the Debtor to pay the Wages and Benefits because such payments are necessary to the Debtor to carry out its fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to act as a fiduciary to “‘protect and preserve the estate, including an operating business’ going-concern value,” on behalf of the debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)).

60. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §

105(a). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of a debtor's business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtor's business reorganization plan. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

61. Numerous courts have used their section 105(a) powers under the “doctrine of necessity” to authorize payment of prepetition obligations where, as here, such payment is an essential element of the preservation of a debtor-in-possession's potential for rehabilitation. *See In re CoServ, L.L.C.*, 273 B.R. at 497 (reasoning that because the debtor in possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”); *In re Synteen Techs., Inc.*, No. 00-02203-W, 2000 WL 33709667, at *2 (Bankr. D.S.C. Apr. 14, 2000) (noting that courts have permission to “allow payment of a prepetition claim when essential to the continued operation of the debtor” (citation and quotations omitted)); *In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (“courts have used their equitable power under section 105(a) . . . to authorize the payment of prepetition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“Under [section 105] the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *In re Quality Interiors, Inc.*, 127

B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of prepetition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain prepetition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”).

62. The “doctrine of necessity” is frequently invoked early in reorganization cases, during the so-called “breathing spell,” when preservation of the estate is most critical and often extremely difficult. *See 2 Collier on Bankruptcy* ¶ 105.02[4][a] (16th ed. 2018) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately). As one court recently confirmed, “a Bankruptcy Court [may] authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor. This is commonly referred to as either the ‘doctrine of necessity’ or the ‘necessity of payment’ rule, which recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *In re Windstream Holdings, Inc.*, 614 B.R. 441, 456-57 (Bankr. S.D.N.Y. 2020) (internal citations omitted).

63. Courts in this District have approved relief similar to that requested here. *See, e.g., In re Aeromexico*, Case No. 20-11563 (SCC) (Bankr. S.D.N.Y. July 30, 2020) [ECF No. 216] (authorizing, but not requiring the debtors to pay prepetition employee obligations similar to those described herein, and continue employee programs in the ordinary course of their operations); *In re LATAM Airlines Group S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. June 28, 2020) [ECF No. 392] (same); *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y. June 17, 2020) [ECF No. 291] (same); *In re Purdue Pharma L.P.*, Case No. 19-23649

(RDD) (Bankr. S.D.N.Y. Oct. 16, 2019) [ECF No. 309] (same); *In re Sears Holdings Corp.*, Case No. 18-23538 (RDD) (Bankr. S.D.N.Y. Nov. 16, 2018) [ECF No. 798] (same); *In re Republic Airways Holdings Inc.*, Case No. 16-10429 (SHL) (Bankr. S.D.N.Y. Mar. 23, 2016) [ECF No. 198] (same); *In re AMR Corporation (American Airlines)*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 29, 2011) [ECF No. 52] (same).⁷

64. Here, the majority of the Employees rely on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses and maintain their health and well-being. Consequently, these Employees will be exposed to significant financial hardships if the Debtor is not permitted to honor the Wages and Benefits. If the Debtor is unable to satisfy such obligations, Employee morale and loyalty will suffer at a time when Employee support is critical. Further, if the Court does not authorize the Debtor to honor its various obligations under the Employee Benefits, the Employees' health coverage could be threatened, potentially burdening individual Employees with the costs of health care. At a minimum, the loss of health care coverage, or uncertainty regarding coverage, would result in considerable anxiety for the Employees at a time when the Debtor needs its Employees to perform their jobs at peak efficiency. For all of the foregoing reasons, a sound business purpose exists to pay the Wages and Benefits.

65. Moreover, under the local laws of the jurisdictions in which the Debtor operates, failing to pay outstanding prepetition Wages and Benefits would be contrary to local law and public policy. This could delay foreign recognition of the Chapter 11 Case in the Philippines and subject the Debtor to administrative and regulatory penalties.

⁷ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtor's proposed counsel.

66. In the absence of such payments, the Debtor is at risk that its Employees seek alternative employment opportunities. Such a development would deplete the workforce, hinder the Debtor's ability to service the needs of its business, and likely diminish creditor and counterparty confidence in the Debtor's proposed restructuring. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a substantial and costly distraction at a time when the Debtor must focus on carrying out its restructuring and resuming full operations as the COVID-19 pandemic abates at the earliest possible date. Indeed, given the highly specialized skills and experience of many of the Debtor's Employees, and the sheer size of the Debtor's workforce, replacing these Employees may prove impossible. In any event these perils can be avoided by granting the relief requested herein. Accordingly, the Debtor must be able to pursue all reasonable measures to retain the Employees by, among other things, continuing to honor wages, benefits and related obligations, including those that accrued prior to the Petition Date, consistent with the terms set forth in the orders attached hereto.

67. Taken together, the nature of the Wages and Benefits, the substantial harm to the Debtor's business that would be caused if those obligations were not honored, the related potential for loss of value in the Debtor's estate, and the fact that nearly all of the obligations in question relate to priority claims, lead to the conclusion that the Wages and Benefits fall well within the scope of obligations whose payments may be authorized pursuant to the doctrine of necessity.

B. Payment of Certain Employee Deductions is Appropriate Under Section 541 of the Bankruptcy Code

68. The Debtor also seeks authority to pay the Employee Deductions. These amounts principally represent the Employees' earnings that governments, the Employees, and the judicial

authorities have designated for deduction from the Employees' paychecks. Indeed, certain Employee Deductions are not property of the Debtor's estate because the Debtor has withheld such amounts from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541; *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994) (observing the "well-settled principle that debtors do 'not own an equitable interest in property . . . [they] hold[] in trust for another,' and that therefore funds held in trust are not 'property of the estate.'") (quoting *Begier v. IRS*, 496 U.S. 53, 59 (1990)).

69. Further, federal, state, and foreign laws require the Debtor to withhold certain tax payments from Employees' paychecks and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672 and 7501(a); *see also Sharon Steel Corp.*, 41 F.3d at 95–97 (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). A failure to pay these amounts could subject the Debtor and its officers and directors to liability. *See, e.g., John F. Olson, et al., Director & Officer Liability: Indemnification and Insurance* § 3:21 (2003). To avoid the potential of such liability, and because the Payroll Taxes are not property of the Debtor's estate, the Debtor requests that the Court authorize it to remit these amounts to the appropriate parties in the ordinary course of business.

**Cause Exists to Authorize the Debtor's Financial Institutions
to Honor Checks and Electronic Fund Transfers**

70. The Debtor has 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 anticipated access to DIP financing. In addition, under the Debtor's existing cash

management system, the Debtor can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtor respectfully requests that the Court authorize and direct all applicable financial institutions, when requested by the Debtor, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Debtor Has Satisfied Bankruptcy Rule 6003(b)

71. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” within 21 days of filing a petition. Irreparable harm “is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation.” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (internal quotations omitted). The “harm must be shown to be actual and imminent, not remote or speculative.” *Id.*

72. As set forth above, the Debtor believes an immediate and orderly transition into chapter 11 is critical to the viability of its operations and that any delay in granting the relief requested could hinder the Debtor’s operations and cause irreparable harm. The failure to receive the requested relief during the first 21 days of this Chapter 11 Case could severely disrupt the Debtor’s operations at this critical juncture and imperil the Debtor’s restructuring as contemplated by the RSAs. Accordingly, the Debtor submits that the relief requested herein is

necessary to avoid immediate and irreparable harm, and that Bankruptcy Rule 6003(b) is satisfied.

Reservation of Rights

73. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtor's or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estate; (g) a waiver or limitation of the Debtor's, or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtor that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtor's or any other party in interest's rights to subsequently dispute such claim.

**Compliance With Bankruptcy Rule 6004(a) and Waiver of Stay Under
Bankruptcy Rule 6004(h)**

74. To implement successfully the relief sought herein, the Debtor requests that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtor also requests that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to operate its business without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully submits that ample cause exists to justify the finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

75. Notice of this Motion has been provided to the following parties, or, in lieu thereof, their counsel (the “**Notice Parties**”): (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 30 largest unsecured claims against the Debtor; (c) the parties to the RSAs; (d) the DIP Lender; (e) the United States Attorney’s Office for the Southern District of New York; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; (h) the Federal Aviation Administration; and (i) any party that has requested service pursuant to Bankruptcy Rule 2002. A copy of this Motion and any order approving it will also be made available on the Debtor’s Case Information Website located at

www.kccllc.net/PAL. In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

No Prior Request

76. No prior request for the relief requested herein has been made to this or any other Court.

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WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Orders granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: September 3, 2021
New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ Jasmine Ball

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*Proposed Counsel to the Debtor and Debtor
in Possession*

Exhibit A

Proposed Interim Order

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

In re:

PHILIPPINE AIRLINES, INC.¹

Debtor.

Chapter 11

Case No. 21-____ (____)

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO (A) PAY CERTAIN
EMPLOYEE WAGES AND OTHER COMPENSATION AND RELATED
OBLIGATIONS AND (B) MAINTAIN AND CONTINUE EMPLOYEE BENEFITS AND
PROGRAMS IN THE ORDINARY COURSE, AND (II) AUTHORIZING AND
DIRECTING APPLICABLE BANKS TO HONOR ALL CHECKS AND TRANSFERS
RELATED TO SUCH OBLIGATIONS**

Upon the Motion² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of an interim order (this “**Interim Order**”) and a final order (a) authorizing, but not directing, the Debtor to (i) pay accrued prepetition wages, salaries and other compensation to its employees, (ii) maintain and continue certain employee benefits and other associated obligations in the ordinary course, as described below, and (b) authorizing and directing the applicable Banks to honor all checks and transfers related to such obligations; and upon the First Day Declaration having been filed with the Court contemporaneously with the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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; and consideration of the Motion and the relief

¹ The Debtor in this chapter 11 case, along with its registration number in the Philippines, is Philippine Airlines, Inc., Philippine Securities and Exchange Commission Registration No. PW 37. The Debtor’s corporate headquarters is located at PNB Financial Center, President Diosdado Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila, Philippines.

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

requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the interim relief requested in the Motion having been as provided in the Motion; and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis; and on the record of such hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate as contemplated by Bankruptcy Rule 6003, provides a net benefit to the Debtor and its estate after taking into account the Bankruptcy Code's priority scheme, and is in the best interest of the Debtor, its estate, creditors, and all parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis to the extent set forth herein.
2. The Debtor is authorized, but not directed, in its sole discretion, to pay the Wages and Benefits and/or honor its wage and benefit obligations in accordance with its stated policies and in the ordinary course of its business, including amounts owing as of the Petition Date on account of (a) Employee Wages, (b) Unpaid Compensation, (c) Employee Deductions, (d) Payroll Taxes, (e) Reimbursable Expenses, and (f) the Employee Benefits.
3. The Debtor is authorized, but not directed, in its sole discretion, to continue to honor the Wages and Benefits, make necessary contributions, pay any unpaid premium, claim,

or amount owed in connection therewith as of the Petition Date, in accordance with the Debtor's ordinary course of business and stated policies, as set forth in the Motion.

4. The Debtor is authorized, but not directed, in its sole discretion, to modify, change, or discontinue any of the Wages and Benefits and to implement new programs, policies, and benefits in the ordinary course of business during this Chapter 11 Case in the Debtor's discretion and without the need for further approval by this Court, subject to applicable law.

5. Notwithstanding anything to the contrary in this Interim Order, and with the exception of the 13th month pay required by Philippine law, nothing in this Interim Order should be construed as approving payment of any bonuses, cash incentives, or severance payments.

6. The Debtor is authorized, but not directed, in its sole discretion, to make payments to applicable third parties for the Employee Deductions, Employee Benefits, and the Payroll Taxes, in accordance with the Debtor's ordinary course of business and stated policies, as set forth in the Motion.

7. The Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly.

8. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtor under this Order whether presented prior to, on, or after the Petition Date to the extent the Debtor has good funds standing to its credit with banks or other financial institutions. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are

issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtor's instructions.

9. The Debtor is authorized, but not directed, in its sole discretion, to reissue any check or electronic payment that originally was given in payment of any prepetition amount authorized to be paid under this Interim Order that is not cleared by the applicable bank or financial institution.

10. Notwithstanding anything to the contrary in this Interim Order, (a) payments made pursuant to this Interim Order shall only be made as they become due, and no payments shall be accelerated prior to the final hearing of this Motion, and (b) no payments shall be made above the statutory cap pursuant to 11 USC 507(a)(4) of \$13,650 per employee prior to the final hearing.

11. Any U.S. Dollar limitation in this Interim Order shall be adjusted as necessary, to account for foreign exchange conversion costs if the payment must be made in a foreign currency.

12. Nothing in this Interim Order should be construed as approving any transfer pursuant to 11 USC § 503(c) ("**Section 503(c)**"), and a separate motion shall be filed for any request that falls within Section 503(c), as to which the rights and defenses of the Debtor and all parties are expressly reserved. Subject to further order of the Court, no payment to any employee shall be made to the extent that it is a transfer subject to Section 503(c). This Interim Order does not implicitly or explicitly approve any bonus plan (besides the 13th month pay under Philippine law), incentive plan, or other plan covered by 503(c) of the Bankruptcy Code.

13. This Interim Order is effective only from the date of entry through this Court's disposition of the Motion on a final basis; *provided* that the Court's ultimate disposition of the

Motion on a final basis shall not impair or otherwise affect any action taken pursuant to this Interim Order.

14. Nothing in this Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor's rights with respect to such matters are expressly reserved.

15. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

16. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtor to dispute or contest the amount of or basis for any claims against the Debtor in connection with or relating to the Debtor's Wages and Benefits.

17. Nothing in this Order nor the Debtor's payment of claims pursuant to this Order shall be construed as (a) an agreement or admission by the Debtor as to the validity or priority of any claim on any grounds, (b) a waiver or impairment of any of the Debtor's rights to dispute any claims on any grounds, (c) a promise by the Debtor to pay any claim, or (d) an implication or admission by the Debtor that such claim is payable pursuant to this Order.

18. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

19. A final hearing to consider the relief requested in the Motion shall be held on _____, 2021 at _____ (Prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior

to _____, 2021 at 4:00 p.m. (Prevailing Eastern Time). Any objections or responses to the entry of the Final Order shall be: (a) filed with the Court and (b) served upon and actually received by (i) the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Susan A Arbeit), (ii) proposed counsel to the Debtor, Debevoise & Plimpton, LLP, 919 Third Avenue, New York, NY 10022 (Attn: Jasmine Ball, Nick S. Kaluk, III, and Elie Worenklein), (iii) counsel to the DIP Lender, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020 (Attn: Andrew Zatz) and (iv) counsel to any official committee then appointed in this chapter 11 case, so as to be received by 4:00 p.m. (Prevailing Eastern Time) seven days before the hearing to approve the relief requested in the Motion on a final basis (the “**Objection Deadline**”). A reply to an objection may be filed with the Court and served on or before 12:00 p.m. (Prevailing Eastern Time) on the day that is at least two business days before the date of the applicable hearing. If no objections or responses are filed and served, this Court may enter the Final Order without further notice or hearing.

20. If no objections are timely filed and served as set forth herein, the Debtor shall, on or after the Objection Deadline, submit to the Court a final order substantially in the form of this Order, which order shall be submitted and may be entered with no further notice or opportunity to be heard afforded any party, and the Motion shall be approved *nunc pro tunc* to the date of the commencement of the Chapter 11 Case.

21. The contents of the Motion and the notice procedures set forth therein are good and sufficient notice and satisfy the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), and no other or further notice of the Motion or the entry of this Order shall be required.

22. Any Bankruptcy Rule (including Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

23. The Debtor is authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

24. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2021
New York, New York

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-____ (____)

**FINAL ORDER (I) AUTHORIZING THE DEBTOR TO (A) PAY CERTAIN
EMPLOYEE WAGES AND OTHER COMPENSATION AND RELATED
OBLIGATIONS AND (B) MAINTAIN AND CONTINUE EMPLOYEE BENEFITS AND
PROGRAMS IN THE ORDINARY COURSE, AND (II) AUTHORIZING AND
DIRECTING APPLICABLE BANKS TO HONOR ALL CHECKS AND TRANSFERS
RELATED TO SUCH OBLIGATIONS**

Upon the Motion² of the above-captioned debtor and debtor in possession in these proceedings (the “**Debtor**”) for entry of a Final order (this “**Final Order**”) (a) authorizing, but not directing, the Debtor to (i) pay accrued prepetition wages, salaries and other compensation to its employees, (ii) maintain and continue certain employee benefits and other associated obligations in the ordinary course, as described below, and (b) authorizing and directing the applicable Banks to honor all checks and transfers related to such obligations; and upon the First Day Declaration having been filed with the Court contemporaneously with the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to

¹ The Debtor in this chapter 11 case, along with its registration number in the Philippines, is Philippine Airlines, Inc. Philippine Securities and Exchange Commission Registration No. PW 37. The Debtor’s corporate headquarters is located at PNB Financial Center, President Diosdado Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila, Philippines.

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

28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the interim relief requested in the Motion having been as provided in the Motion; and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis to the extent set forth herein.
2. The Debtor is authorized, but not directed, to pay the Wages and Benefits and/or honor its wage and benefit obligations in accordance with its stated policies and in the ordinary course of its business, including amounts owing as of the Petition Date on account of (a) Employee Wages, (b) Unpaid Compensation, (c) Employee Deductions, (d) Payroll Taxes, (e) Reimbursable Expenses, and (f) the Employee Benefits.
3. The Debtor is authorized, but not directed, to continue to honor the Wages and Benefits, make necessary contributions, pay any unpaid premium, claim, or amount owed in connection therewith as of the Petition Date, in accordance with the Debtor’s ordinary course of business and stated policies, as set forth in the Motion.
4. To the extent the Debtor seeks to pay any Employee more than \$13,650 on account of a prepetition claims that is subject to the priority cap of section 507(a)(4) of the

Bankruptcy Code, the Debtor shall provide the U.S. Trustee with at least five business days' prior notice (or as much notice as is reasonably practicable under the circumstances); *provided*, that the Debtor shall not, without further order of the Court, (a) make any payment of prepetition employee obligations that are in excess of the priority cap of section 507(a)(4) of the Bankruptcy Code to any insider (as that term is defined in section 101 of the Bankruptcy Code) (a "**Statutory Insider**"), or (b) make any severance payment to any Statutory Insider.

5. The Debtor is authorized to modify, change, or discontinue any of the Wages and Benefits and to implement new programs, policies, and benefits in the ordinary course of business during this Chapter 11 Case in the Debtor's discretion and without the need for further approval by this Court, subject to applicable law.

6. The Debtor is authorized to make payments to applicable third parties for the Employee Deductions, Employee Benefits and the Payroll Taxes, in accordance with the Debtor's ordinary course of business and stated policies, as set forth in the Motion.

7. The Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly.

8. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtor under this Order whether presented prior to, on, or after the Petition Date to the extent the Debtor has good funds standing to its credit with banks or other financial institutions. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtor's instructions.

9. The Debtor is authorized to reissue any check or electronic payment that originally was given in payment of any prepetition amount authorized to be paid under this Final Order that is not cleared by the applicable bank or financial institution.

10. Nothing in this Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor's rights with respect to such matters are expressly reserved.

11. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

12. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtor to dispute or contest the amount of or basis for any claims against the Debtor in connection with or relating to the Debtor's Wages and Benefits.

13. Nothing in this Order nor the Debtor's payment of claims pursuant to this Order shall be construed as (a) an agreement or admission by the Debtor as to the validity or priority of any claim on any grounds, (b) a waiver or impairment of any of the Debtor's rights to dispute any claims on any grounds, (c) a promise by the Debtor to pay any claim, or (d) an implication or admission by the Debtor that such claim is payable pursuant to this Order.

14. The contents of the Motion and the notice procedures set forth therein are good and sufficient notice and satisfy the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**"), and no other or further notice of the Motion or the entry of this Order shall be required.

15. Any Bankruptcy Rule (including Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

16. The Debtor is authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

17. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2021
New York, New York

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE