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Hearing Date & Time: October 7, 2020, 2:00 p.m. (prevailing Eastern Time)

Objection Deadline: September 30, 2020 (prevailing Eastern Time)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
AVIANCA HOLDINGS S.A., *et al.*,[1]	Case No. 20-11133 (MG)
Debtors.	Jointly Administered
AVIANCA HOLDINGS S.A., *et al.*,	
Plaintiffs.	
v.	Adv. Proc. 20-01194-mg
G4S FACILITY MANAGEMENT CIA. LTDA. And G4S SECURE SOLUTIONS INTERNATIONAL INC.,	
Defendants.	

MOTION TO DISMISS AMENDED COMPLAINT

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

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Comes Defendant G4S Secure Solutions International Inc. ("G4S International"), by and through counsel, and hereby files its Motion to Dismiss Plaintiffs' Amended Complaint [Docket No. 15] for failure to state a claim pursuant to Fed. R. Bankr. P. 7012 and Fed. R. Civ. P. 12(b)(6). In further support of this Motion, G4S International avers as follows:

INTRODUCTION

This action originally concerned the Debtors' claims that G4S International and G4S Facility Management CIA. LTDA ("G4S Ecuador"), an indirect subsidiary of G4S International, violated the automatic stay through attempts to collect a pre-petition debt owed by Avianca-Ecuador S.A. ("Avianca Ecuador") to G4S Ecuador. Having apparently now realized that its initial claims against G4S International and G4S Ecuador were untenable, the Debtors have amended their Complaint based on documents that they received with the benefit of pre-answer discovery. The Debtors' second effort fares no better. Because the Debtors still cannot state a claim upon which relief can be granted against G4S International, this Motion should be granted and the claims in the Amended Complaint should be dismissed.

As in the original Complaint, all of the acts that the Debtors allege were in violation of the automatic stay was purportedly taken by G4S Ecuador. However, the Amended Complaint omits G4S Ecuador as a defendant entirely. The Debtors now allege, based on a privilege log delivered to the Debtors that logs communications between G4S International and G4S Ecuador, that the Court "should presume, that G4S advised its subsidiary, G4S Ecuador, to take such actions in violation of the automatic stay, or at a minimum did not prohibit or dissuade G4S Ecuador from taking such actions." (Amended Complaint, at ¶ 6). Thus, the basis for the Debtors' claims against G4S

International – now the sole defendant in this case – are that (1) it may possibly have advised its subsidiary to violate the automatic stay; and/or (2) it did not prohibit or dissuade G4S Ecuador from doing so.

These actions, even taken as true, do not state an actionable claim for violation of the automatic stay against G4S International. First, allegations that a Court should "presume" or may assume wrongful conduct fails to state a claim. The contents of the communications logged are privileged. If the Court were permitted to "presume" the contents of those communications, G4S International would be placed in the unfair position of maintaining its attorney-client and work product privileges or rebutting the Debtors' allegations. The law does not require such a Hobson's Choice. However, even assuming for the sake of argument that G4S International did advise G4S Ecuador to take action in violation of the stay, such conduct is not itself a violation of the stay because the rendering of legal advice is not an automatic stay violation.

Second, this leaves only the Debtors' allegation that G4S International breached the stay by failing to stop G4S Ecuador from taking action in violation of the automatic stay. But a corporate parent cannot be liable for the actions of its subsidiary unless it exercises such a degree of control over the subsidiary that the subsidiary is essentially the alter ego of the parent. The Debtors do not attempt to allege facts that would demonstrate that G4S Ecuador is the alter ego of G4S International. In similar contexts, this Court has previously found that a parent cannot be liable for failing to prevent allegedly wrongful acts by its subsidiary, and at the earlier preliminary injunction hearing held in this case, the Court expressed skepticism as to the merits of that position as well. And in fact, this Court has held, at least with respect to tortious conduct, that even a parents' *express direction* to the subsidiary to commit wrongful conduct would not state a claim for relief.

The Debtors ask the Court to accept the position that a parent entity can be held liable for the acts of its subsidiary by virtue of the fact that the parent rendered legal advice to the subsidiary or, apparently, that the parent simply had knowledge of the subsidiary's actions and failed to stop them. G4S International submits that accepting this position would have a profound and detrimental impact on attorney-client relations and the law of limited shareholder liability. The Court should reject the Debtors' invitation to extend the law in this manner, and dismiss the Amended Complaint.

FACTUAL BACKGROUND

This action now concerns the Debtors' claims that G4S International violated the automatic stay by allegedly advising G4S International to collect a pre-petition debt, or at least, failing to prevent G4S Ecuador from doing so. Specifically, the Debtors allege that after the petition in this case was filed, G4S Ecuador attempted to collect amounts related to pre-petition services due under a Facility Agreement (as defined in the Complaint). However, even in the Amended Complaint, the Debtors do not allege that G4S International took any of the actions that are purportedly in violation of the stay, or even that G4S International is owed a debt by Avianca Ecuador. Having presumably confirmed that they cannot establish personal jurisdiction over G4S Ecuador, the Debtors have now left G4S Ecuador off the Amended Complaint entirely.

Instead, the Debtors now assert that G4S International violated the stay through advising its foreign subsidiary with respect to United States bankruptcy law and by not mandating that G4S Ecuador cease any alleged collection efforts. Relying upon a privilege log produced in this action on August 17, 2020 that logs communications between G4S Ecuador and G4S International, the Debtors allege that G4S International violated the automatic stay through its "participation in or acquiescence to" G4S Ecuador's conduct. (Complaint, at ¶¶ 45-47). Without challenging the designation of privilege as to any of the documents at issue, the Debtors cavalierly allege that they

"may only presume that G4S [International] provided legal advice to G4S Ecuador and participated in and/or instructed it to take actions violative of the automatic stay." (Complaint, at ¶¶ 45-47). As far as G4S International can tell, the allegations that arise from those privileged communications form the entirety of the Debtors' allegations against G4S International.

ARGUMENT

I. Standard of Review

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failure to state a claim upon which relief can be granted. Although a Court deciding such a motion must take a complaint's factual allegations as true and draw all reasonable inferences in the plaintiff's favor, "that 'tenet' is inapplicable to legal conclusions." *Harris v. Mills*, 572 F.3d 66, 71-72 (2d Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss," and "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged--but it has not 'shown'—'that the pleader is entitled to relief.'" *Id.* at 679 (citing Fed. R. Civ. P. 8(a)(2)).

Importantly, a facially plausible claim is a requirement that must be met independent of any information gleaned from discovery. *See Angiulo v. County of Westchester*, 2012 U.S. Dist. LEXIS 153656, at *10 n.4 (S.D.N.Y. 2012) ("[A]s *Iqbal* makes clear, a plausible claim must come *before* discovery, not the other way around.") (emphasis in original); *Iqbal*, 556 U.S. at 678-79 (holding that Rule 8 "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions."). This precedent makes clear that the allegations in a complaint have meaning and

prevent plaintiffs from engaging in "fishing expeditions" by filing bare-bones allegations that can then be back-filled through discovery.

Based on these principles, the allegations in the Amended Complaint as asserted against G4S International fail to state a plausible claim and should be dismissed.

II. The Claims Against G4S International Should Be Dismissed Because a "Presumption" of Wrongdoing Does Not State a Claim.

As in the initial Complaint, the Debtors fail to assert any facts showing that G4S International took action in violation of the automatic stay. The Debtors do not allege that G4S International took any collection action against Avianca Ecuador. All of the factual allegations in that regard are against G4S Ecuador. The only action that the Debtors claim that G4S committed in violation of the stay was the rendering of legal advice regarding U.S. bankruptcy law, which the Debtors ask this Court to presume was a direction to violate the stay. But such an allegation is wholly insufficient to state a claim. As the Supreme Court held in *Iqbal*, "where the well-pleaded facts do not permit the court to infer more than the *mere possibility of misconduct*, the complaint has alleged--but it has not 'shown'—'that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 678 (emphasis added). Asking the Court to presume misconduct is nothing more than asserting such a "mere possibility." As a result, the Amended Complaint should be dismissed.

III. Rendering Legal Advice Does Not Violate the Automatic Stay.

As stated above, allegations that a defendant may have done something wrong does not state a claim for relief. But even crediting the Debtors' allegations, they do not state a claim because simply providing legal advice is not a violation of the automatic stay. The Bankruptcy Court for the Northern District of California addressed this issue directly in *In re Parker*, 2018 Bankr. LEXIS 239 (Bankr. N.D. Cal. Jan. 30, 2018). In *Parker*, the debtor alleged that an attorney "provided on-going legal advice regarding [the debtor's] bankruptcy and participated (to some degree) in developing a

strategy by which BCOA could economically recover from [the debtor's] discharge." *Id.* at *9. At the same time, the debtor failed to provide evidence that the attorney took "any affirmative step to actually collect, assess or recover any debt." *Id.* Based on these facts, the court rejected the debtor's claims:

> While the act of providing legal advice may lead to impermissible collection efforts, it does not, in and of itself, violate the automatic stay. . . . Parker did not cite to a single case where an attorney was held liable under Bankruptcy Code § 362(k) for simply providing legal advice. . . . Parker has not presented any evidence which creates a question of fact that Jordan undertook specific actions as agent or litigation counsel that violated the automatic stay. Rather, he provided advice, which BCOA purportedly accepted and implemented to allegedly collect, assess or recover a pre-petition claim against Parker. There is no evidence indicating that Jordan affirmatively took any steps to collect, assess or recover Parker's unpaid HOA assessments. Accordingly, Jordan's summary judgment is granted.

Id. at *9-*10, *11, *12-*13.

The situation in *Parker* mirrors the facts here. As in *Parker*, there is no allegation that G4S International itself participated in any collection efforts against the Debtors. As in *Parker*, the Debtors' allegation is that G4S International "participated" in the collection efforts by providing legal advice to G4S Ecuador. This Court should therefore reach the same result as the Court in *Parker* by finding that legal advice is not a violation of the automatic stay. Indeed, any other result would have a severe chilling effect on the provision of legal advice, as it would in essence make attorneys strictly liable for the actions of their clients.

Crediting the Debtors' position would also contravene the language of Section 362(a) of the Bankruptcy Code. The only subpart of Section 362(a) that could even remotely apply to the Debtors' allegations against G4S International is Section 362(a)(6), which prohibits "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." Under no circumstances is the provision of legal advice an "act" to collect, assess, or recover on a claim. Because providing legal advice is not a violation of the automatic stay, the Debtors'

assertions that G4S International violated the automatic stay in that matter are not sustainable and must be dismissed.

IV. G4S International's Alleged Failure to Prevent G4S Ecuador from Pursuing a Prepetition Claim Does Not State a Claim for Violation of the Automatic Stay.

Perhaps recognizing that its claims that G4S International violated the stay through legal advice are doomed to failure, the Debtors continue their attempts to impose liability upon G4S International through its role as an indirect owner and parent of G4S Ecuador. While the Debtors disclaim any intent to pierce G4S Ecuador's corporate veil, that is, in essence, what they seek to do by suing G4S International based on a theory that it failed to prohibit and/or acquiesced in G4S Ecuador's conduct. This is nothing more than a disguised effort to pierce the corporate veil. Because the Debtors have *still* not alleged any facts that would suffice to pierce G4S Ecuador's corporate veil, the Court should reject the Debtors' efforts to do so through a deceptive "acquiescence" theory.

"It is fundamental that a parent is considered a legally separate entity from its subsidiary, and cannot be held liable for the subsidiary's actions based solely on its ownership of a controlling interest in the subsidiary." *N.Y. State Elec. & Gas Corp. v. FirstEnergy Corp.*, 766 F.3d 212, 224 (2d Cir. 2014).[2] A subsidiary's corporate veil can only be pierced to attack the parent where "(1) the parent corporation dominates the subsidiary in such a way as to make it a 'mere instrumentality' of the parent; (2) the parent company exploits its control to 'commit fraud or other wrong;' and (3) the plaintiff suffers an unjust loss or injury as a result of the fraud or wrong." *Id.*

In weighing whether a subsidiary is a mere instrumentality of a parent, a court must consider the following factors: (1) the absence of the formalities and paraphernalia that are part and parcel of the corporate existence, i.e., issuance of stock, election of directors, keeping of corporate records

[2] While *FirstEnergy* was decided under New York, the veil-piercing law of New York and Florida, where G4S International is located, are virtually identical. *Wm. Passalacqua Builders v. Resnick Developers S.*, 933 F.2d 131, 137 (2d Cir. 1991).

and the like; (2) inadequate capitalization; (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes; (4) overlap in ownership, officers, directors, and personnel; (5) common office space, address and telephone numbers of corporate entities; (6) the amount of business discretion displayed by the allegedly dominated corporation; (7) whether the related corporations deal with the dominated corporation at arm's length; (8) whether the corporations are treated as independent profit centers; (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group; and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own. *Id.*

In response to the Debtors' Motion for Temporary Restraining Order and Preliminary Injunction, G4S International submitted evidence that all of these factors point to a finding that G4S Ecuador and G4S International are maintained as separate entities such that it is inappropriate to treat them as a single unit, as the Debtors wish. While that evidence remains in the record, it suffices for the purposes of this Motion to simply state that the Debtors have not ***alleged*** any facts that, if proven, would permit G4S International to be held liable for the actions of G4S Ecuador.

As the Debtors are unable to even assert any facts that would permit them to pierce the corporate veil, they instead try to frame their claim differently by alleging that G4S International itself violated the stay by not stopping its subsidiary from acting. In the related context of the tort of conversion, this Court has previously rejected that exact argument. In *LaMonica v. CEVA Grp., PLC (In re Cil Ltd.)*, 582 B.R. 46 (Bankr. S.D.N.Y. 2018), *amended on reconsideration on other grounds*, 2018 Bankr. LEXIS 1770 (Bankr. S.D.N.Y. June 15, 2018), this Court addressed a plaintiff-trustee's claim against a parent entity for an alleged conversion committed by one of its subsidiaries. In moving to dismiss the trustee's allegations, the parent made the same argument that G4S International makes here:

> The Trustee's argument that CEVA Group and CEVA Holdings should be held to account for CEVA Finance's alleged acts appears to be based solely on the allegation that CEVA Group and CEVA Holdings "generally have the ability to cause CEVA Finance . . . to pay or to refuse to pay funds" and "to cause CEVA Finance . . . to release the CIL Cash to the Trustee." This amounts to little more than an unremarkable observation that shareholders can cause the companies they own to take certain actions, which, if accepted for purposes of piercing the corporate veil, would totally undermine the general rule that a parent or holding corporation is not liable for the acts, contracts, or obligations of its subsidiaries.

[Adv. No. 14-02442 (JLG), Docket No. 35, at 66]. In response, the trustee made the same argument that the Debtors make here:

> As alleged in the Complaint, CEVA and CEVA Holdings control their subsidiary CEVA Finance. (Compl. ¶ 29.) They have the ability to cause CEVA Finance to pay or refuse to pay funds. (*Id*. ¶¶ 130, 219.) As the ultimate owners of the CEVA Enterprise, and as parties with the ability to direct their subsidiaries to return the CIL Cash, CEVA and CEVA Holding are unjustly benefitting themselves (and their shareholders) at the Debtor's expense by retaining the CIL Cash.

[Adv. No. 14-02442 (JLG), Docket No. 39, at 95]. This Court rejected the trustee's position and held that "the liability of a parent company for alleged torts of a wholly owned subsidiary can never be predicated solely upon the fact of a parent corporation's ownership of a controlling interest in the shares of its subsidiary." *LaMonica*, 582 B.R. at 167 (citations omitted). "Rather, at the very least, a plaintiff seeking to hold a parent company so accountable, must demonstrate direct intervention by the parent in the management of the subsidiary to such an extent that the subsidiary's paraphernalia of incorporation, directors and officers are completely ignored." *Id.* As the trustee in *LaMonica* "made no allegations that either of [the parent entities] so dominated and controlled [the subsidiary's] operations that corporate formalities should be disregarded," this Court dismissed the claims against the parent entities.

The same result should obtain in this case. As in *LaMonica*, the Debtors here have entirely failed to allege any facts that would support a claim that G4S Ecuador's corporate formalities should be disregarded. Indeed, the Debtors have disclaimed any intent to pierce the corporate veil, and

instead apparently seek to reframe the allegations against G4S International as a "failure to prevent" claim. Permitting such a claim to go forward would completely eviscerate the doctrine of corporate separateness and would make any controlling owner strictly liable for its subsidiary's actions in any case. The Debtors' Amended Complaint contravenes well-settled corporate law and prior opinions of this Court and should be dismissed.

V. Even Assuming the Debtors Had Alleged a Direction from G4S International to G4S Ecuador to Violate the Automatic Stay, Such a Contention Would Not State a Claim.

As stated in Part II, *supra*, the Debtors have not expressly alleged that G4S International directed G4S Ecuador to violate the automatic stay. Instead, they have asked this Court to presume that the content of privileged communications includes that direction. While the Debtors' claims as framed are not actionable, even assuming that G4S International did advise G4S Ecuador to take action in violation of the automatic stay, that advice would not itself amount to a stay violation. This was stated by the Court in *Parker*, in which it held "[w]hile the act of providing legal advice may lead to impermissible collection efforts, it does not, in and of itself, violate the automatic stay." *Parker*, 2018 Bankr. LEXIS 239 at *9-*10. And this Court stated it even more directly in *LaMonica*:

> [T]he Trustee seems to tie his conversion claim against CEVA Group and CEVA Holdings to his assertion that "CEVA [Group] and CEVA Holdings, who control CEVA Finance, are directing their wholly-owned subsidiary to withhold money that belongs to the CIL estate." Trustee's Opp'n at 95. The Court finds no merit to that contention because even assuming that those entities gave that direction, . . . , that would not rise to the level of conversion. . . . *The Court finds no support for the notion that a parent company's failure to direct its subsidiary to return property allegedly converted by the subsidiary, gives rise to a claim that the parent has converted the property*.

LaMonica, 582 B.R. at 169 n.51 (emphasis added). While the *LaMonica* case concerned a claim for conversion, its logic is readily applicable to this case. The automatic stay prohibits "acts" to collect on prepetition claims. As with a claim for conversion, absent evidence of conduct sufficient to pierce

the corporate veil, a parent company directing its subsidiary to "act" is not in and of itself an "act" in violation of the stay. Accordingly, even if the Debtors had alleged that G4S International told G4S Ecuador to violate the stay, such action on its own would not violate the automatic stay.

CONCLUSION

For the foregoing reasons, G4S International asks that the Court dismiss this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this the 22nd day of September, 2020, electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures upon all parties in the electronic filing system in this case.

/s/ John M. Spires
Counsel for Defendants

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
AVIANCA HOLDINGS S.A., *et al.*,[1]	Case No. 20-11133 (MG)
Debtors.	Jointly Administered
AVIANCA HOLDINGS S.A., *et al.*,	
Plaintiffs.	
v.	Adv. Proc. 20-01194-mg
G4S FACILITY MANAGEMENT CIA. LTDA. And G4S SECURE SOLUTIONS INTERNATIONAL INC.,	
Defendants.	

ORDER GRANTING MOTION TO DISMISS

Upon the Motion of G4S Secure Solutions International Inc. ("International"), for an Order dismissing the Plaintiffs' Amended Complaint against International; it is hereby

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

ORDERED that International's motion be, and is GRANTED, and that the Plaintiffs' Amended Complaint against International are dismissed with prejudice.

Dated: _____
New York, New York

/s/_____
THE HONORABLE MARTIN GLENN
UNITED STATE BANKRUPTCY JUDGE