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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

PLAINTIFFS' OPPOSITION TO DEFENDANT G4S SECURE SOLUTIONS INTERNATIONAL, INC.'S MOTION TO DISMISS THE 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); Nicaragüense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo 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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Plaintiffs, the debtors and debtors-in-possession (the "Debtors")[2] in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), by and through their attorneys, Milbank LLP, hereby submit this opposition to Defendant G4S Secure Solutions International's ("G4S") *Motion to Dismiss Amended Complaint* [Dkt. No. 16] and accompanying memorandum of law ("Def. Br."). Debtors represent as follows:

PRELIMINARY STATEMENT

This adversary proceeding arises under Section 362 of the United States Bankruptcy Code (the "Bankruptcy Code") based on G4S's willful violation of this Court's automatic stay order. In the months following Debtors' filing of the Chapter 11 Cases, Defendant G4S and its subsidiary, G4S Facility Management Cia. Ltda. ("G4S Ecuador") took the following actions: (1) attempted to collect a prepetition debt from Debtors, and (2) terminated the contract between the parties. Each of these actions is a clear violation of the automatic stay. Debtors made several attempts to inform G4S and G4S Ecuador that these actions would violate the stay. Nevertheless, G4S and G4S Ecuador pressed forward. In mid-June, after negotiations to reach a compromise fell through and G4S terminated the contract between the parties, and amidst threats of litigation in Ecuadorean courts by G4S Ecuador, Debtors commenced this action.

Not only was G4S aware that G4S Ecuador demanded that Debtors pay the prepetition debt, but it communicated with G4S Ecuador on numerous occasions about United States bankruptcy law with respect to the Debtors' bankruptcy case and the prepetition amounts owed. G4S seeks dismissal of the Amended Complaint on the grounds that Debtors fail to state a claim against G4S as there are no allegations of its direct involvement in the decision to violate the automatic stay. However, contrary to G4S's contention, Debtors have adequately alleged facts to

[2] All capitalized terms shall have the meaning ascribed in Debtors' Amended Complaint (Dkt. No. 15). Unless otherwise specified, all references to "¶ __" are to paragraphs in the Amended Complaint.

support a finding that G4S participated in or acquiesced in the improper actions of G4S Ecuador. Debtors are not required to plead more than that fact at the complaint stage.

Debtors concede that they amended the original complaint with the benefit of limited pre-answer discovery permitted by this Court. In the course of this discovery, G4S produced a privilege log that identifies communications between G4S and G4S Ecuador regarding the collection of the prepetition debt and U.S. bankruptcy law. G4S now wishes to use these communications and the asserted privilege as both a sword and a shield. G4S has asserted privilege over any and all written communications that would truly reveal the nature of its involvement, while at the same time asserting that it was not involved.

Even further, G4S argues that even if Debtors' allegations are true, "rendering legal advice is not an automatic stay violation." Def. Br. at 5. But G4S attempts to mischaracterize the relationship between G4S, as a parent company, and G4S Ecuador as a subsidiary, by minimizing it to a simple attorney-client relationship. The Court should not accept this characterization; because of the asserted privilege, and because Debtors have not yet completed discovery, neither Debtors, nor this Court, are in a position to ascertain the exact nature of the relationship between G4S and its subsidiaries with respect to the stay violations. In any event, because the privilege log evidences G4S's involvement in some fashion in G4S Ecuador's decision to violate the automatic stay, the Amended Complaint meets the pleading burden under the Federal Rules of Civil Procedure. For these reasons, and for the additional reasons stated herein, the Court respectfully should deny G4S's motion to dismiss in full.

FACTUAL BACKGROUND

On May 10, 2020 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The facts and circumstances of

Debtors' bankruptcy have been stated in numerous motions before the Court in the Chapter 11 Cases.

This dispute arises out of an approximately $143,000 debt that G4S Ecuador contends Debtors owe. ¶ 4. This debt arises from services provided under a Facility Management Services Contract (as amended from time to time, the "Facility Agreement") between Debtors and a wholly owned subsidiary of G4S, G4S Ecuador. Pursuant to the Facility Agreement, G4S Ecuador provided certain cleaning, repair, maintenance, and fumigation services to the Debtors at various facilities in Ecuador.

Following the Debtors' filing of the Chapter 11 Cases, on May 12, 2020, this Court entered an *Order (I) Enforcing the Protections of 11 U.S.C. §§ 362, 365, 525 and 541(c); (II) Approving the Form and Manner of Notice; and (III) Granting Related Relief* [Docket No. 46] (the "Automatic Stay Order"). On the very same day that the Court entered this order, G4S Ecuador contacted the Debtors and informed them of its intention to suspend performance under the Facility Agreement unless certain prepetition debts were paid in full. In the course of discussions with G4S Ecuador, Debtors provided G4S Ecuador with two letters and copies of the Automatic Stay Order (the "Stay Notices"), explaining the effect of Sections 362 and 365 of the Bankruptcy Code. ¶¶ 21-23. G4S Ecuador refused to continue to honor the Facility Agreement and perform as required by the automatic stay.

In light of these blatant violations of the automatic stay, and discussions between the parties reaching no satisfactory conclusion, Debtors commenced this action and moved for a temporary restraining order. While the Court denied the motion, it granted Debtors leave to conduct expedited discovery. After claiming there were no non-privileged communications responsive to any of Debtors' requests for production, G4S produced a privilege log detailing eleven

communications between and among G4S, G4S Ecuador, and G4S Latin America and Caribbean ("G4S LatAm"). These communications revealed that the three entities corresponded about the Chapter 11 Cases, and legal advice regarding the amounts owed by the Debtors and United States bankruptcy law. G4S now attempts to use the privilege asserted over these communications to claim that G4S had no involvement with the decision to violate the automatic stay, while at the same time preventing Debtors from challenging that fact.[3]

LEGAL STANDARD

Rule 7012(b) of the Federal Rules of Bankruptcy Procedure incorporates Fed. R. Civ. P. 12(b)(6), which permits a party to move to dismiss an adversary proceeding if a complaint fails to state a claim upon which relief may be granted. *See* Fed. R. Bankr. P. 7012(b). When addressing a motion to dismiss under Rule 12(b)(6), the Court must "accept as true all factual statements alleged in the complaint and draw all inferences in favor of the non-moving party." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007) (citation omitted). To survive a motion to dismiss, a complaint need only contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

"Plausibility 'is not akin to a probability requirement,' rather plausibility requires 'more than a sheer possibility that a defendant has acted unlawfully.'" *Gowan v. The Patriot Group, LLC*

[3] Debtors also conducted a 30(b)(6) deposition of G4S on September 21, 2020. The witness provided by G4S, Fiona Walters, who was also party to one of the communications in the privilege log, could not testify as to whether there were any communications outside of those listed on the privilege log, and stated that she had made no attempts to educate herself on that fact. Debtors plan to further establish if there were any additional communications in the discovery stage.

(*In re Dreier LLP*), 452 B.R. 391, 406 (Bankr. S.D.N.Y. 2011) (quoting *Iqbal*, 556 U.S. at 678). Thus, "if the plaintiff's well-pleaded allegations 'nudge its claims across the line from conceivable to plausible,' the complaint will not be dismissed." *Taub v. World Fin. Network Bank*, 950 F. Supp. 2d 698, 700-01 (S.D.N.Y. 2013) (quoting *Twombly*, 550 U.S. at 570). Determining whether a complaint is "facial[ly] plausib[le]" is context-specific, requiring a court to draw on its experience and common sense. *Iqbal*, 556 U.S. at 678. Therefore, a court should only dismiss a complaint if it fails to plead sufficient facts "to raise a reasonable expectation that discovery will reveal evidence" necessary for relief. *Twombly*, 550 U.S. at 556.

ARGUMENT

I. G4S's Participation in and Acquiescence in Its Subsidiary's Actions Constitute a Willful Violation of the Automatic Stay

A. The Amended Complaint Adequately States a Claim Based Upon Violation of the Automatic Stay

To plead a claim for violation of the automatic stay, a plaintiff must allege three elements: "first, that the automatic stay was in effect at the time of the alleged violation; second, that the property at issue was property of the estate; and third, that the conduct in question constitutes a violation of the automatic stay." *In re Brizinova*, 554 B.R. 64, 79 (Bankr. E.D.N.Y. 2016). G4S argues that Debtors cannot state a claim against it based upon a violation of the automatic stay because it believes that "all of the acts that the Debtors allege were in violation of the automatic stay [were] purportedly taken by G4S Ecuador." Def. Br. at 4. However, Debtors adequately plead facts to show that G4S was involved in some way in the willful decision to violate the automatic stay. The privilege log produced by G4S clearly demonstrates that fact, and Debtors' allegations based on the privilege log are more than adequate to meet the plausibility standard.

During the hearing on Debtors' Motion for a Temporary Restraining Order [Dkt. No. 2] (the "TRO Hearing"), this Court granted Debtors leave to conduct expedited discovery. Although

G4S claimed there were no non-privileged written communications responsive to any of Debtors' discovery requests, it produced a privilege log containing eleven communications between G4S, G4S Ecuador, and G4S LatAm. The individuals involved in these communications were both business and legal personnel from G4S. ¶¶ 25-26. At a minimum, the descriptions of these communications reveal that G4S was involved in some way in G4S Ecuador's decision to terminate the Facility Agreement and demand payment of prepetition debts. The legal director for G4S Ecuador, Andres Ochoa, clearly discussed the Chapter 11 Cases with legal counsel at G4S and G4S LatAm on "U.S. bankruptcy law" with respect to the Chapter 11 Cases and the prepetition amounts owed by Debtors under the Facility Agreement. ¶¶ 26-28.[4] The log also reveals the dates of these communications, demonstrating that many of the communications occurred on the same days that Debtors sent notices to G4S Ecuador. *Id.* Now G4S, which has only produced this list of privileged communications, intends to use this as a defense to claim that G4S had no involvement in the decision outside of the "rendering of legal advice regarding U.S. bankruptcy law." Def. Br. at 8. Furthermore, during the TRO Hearing, counsel for G4S stated that "[G4S and G4S Ecuador] don't play a role in each other's business decisions or day-to-day decisions" and "the companies make their own legal decisions." TRO Hearing Tr. 25:20-22. These points are belied by the fact that the privilege log reveals that G4S was closely involved and had numerous communications regarding the legal issues in this matter. Despite G4S's assertions, it is entirely plausible that G4S, G4S Ecuador, and G4S LatAm discussed the implications of violating the automatic stay, and perhaps G4S even encouraged G4S Ecuador to attempt to collect the debts

[4] One of the individuals also involved in the communications with Debtors was Luis Mamari, regional counsel for G4S LatAm. Debtors and their counsel had direct conversations with him about the collection of prepetition debts owed to G4S. The privilege log reveals that Mr. Mamari subsequently had conversations on the issue with regional general counsel for North America, Michael Hogsten. ¶¶ 26, 28-29.

based on its understanding of the law.[5] It is also plausible that there were additional oral communications that are not reflected on the privilege log that evidence G4S's complicity or involvement in the violations of the automatic stay.

G4S contends that Debtors' allegations fail to meet their pleading burden under *Iqbal*. Def. Br. at 8. But, Debtors' complaint pleads more than sufficient facts to support a cognizable legal theory on the claim for violation of the automatic stay, as it provides facts and evidence showing that G4S was not only involved with G4S Ecuador's decision to violate the automatic stay, but the timing of the communications included in the complaint coincides with the dates of each of the Stay Notices provided by Debtors to G4S Ecuador, further bolstering the plausibility of Debtors' claims.

The Second Circuit has expressly rejected the notion that *Twombly* or *Iqbal* impose a heightened pleading standard. *See Arista Records LLC v. Doe*, 604 F.3d 110, 119 (2d Cir. 2010) ("[T]he notion that *Twombly* imposed a heightened standard that requires a complaint to include specific evidence, factual allegations in addition to those required by Rule 8…is belied by the *Twombly* opinion itself.") The court went on to explain that it would be impermissible to require a plaintiff to plead any "specific evidence or extra facts beyond what is needed to make the claim plausible." *Id.* at 120-21. G4S's attempts to attack the factual sufficiency of Debtors' allegations is not proper at this pleading stage. It is clear that G4S was involved in communications with G4S Ecuador before G4S Ecuador took actions violative of the automatic stay. G4S cannot and has not refuted this. No more is required to meet the standard under *Iqbal*.

[5] Even this Court expressed its view that this very situation could change the outcome of this case. TRO Hearing Tr. 27:1-6 (July 17, 2020) ("I have to tell you, I'm not making any determine – that's less clear to me. I mean, if facts developed that there were communications between International and Ecuador directing or encouraging them to take steps to collect the debt, that could well shift what the outcome would be.")

B. G4S Should not Be Permitted to Use the Attorney Client and Work Product Privileges as Both a Sword and a Shield

Courts in this circuit have frequently stated that privilege may not be used as both a sword and a shield. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991) ("[T]he attorney client privilege cannot at once be used as a shield and a sword."); *In re Adelphia Commc'ns. Corp.*, 2007 WL 601452 at *3 (Bankr. S.D.N.Y. Feb. 20, 2007) ("The 'at issue' waiver doctrine prevents unfair use of the attorney client privilege as a sword, to disclose only self-serving communications, and as a shield, to bar discovery of other communications that an adversary could use to challenge the truth of the claim."). G4S asserts that Debtors "fail to assert any facts showing that G4S International took action in violation of the automatic stay." Def. Br. at 8. However, at the same time G4S asks Debtors and this Court to ignore communications that plausibly could be an instruction to act in a particular manner. This includes communications relating to "legal advice regarding United States bankruptcy law with respect to Avianca bankruptcy" and "legal advice regarding amounts owed by Avianca Ecuador and issues raised by bankruptcy case." In addition, in the course of limited discovery, G4S also produced a 30(b)(6) witness Fiona Walters, a Senior Vice President of G4S, who was uneducated on many of the noticed topics. Ms. Walters, who was also party to one of the email communications on G4S's privilege log, was unable to testify as to whether any other non-privileged communications, including oral communications, occurred between G4S and G4S Ecuador on the issue of collecting the prepetition debt and terminating the Facility Agreement. She was similarly unable to testify to any details of the corporate and legal relationships between G4S and G4S Ecuador. G4S may not one the one hand assert that it did not participate in G4S Ecuador's decision to violate the automatic stay, while on the other refusing to allow any inquiry into the communications between G4S and G4S Ecuador.

C. G4S's Remaining Arguments Are Not Grounds for Dismissal

1. G4S Did Not Merely "Render Legal Advice"

G4S also argues that rendering legal advice does not violate the automatic stay. It cites to one case from the Northern District of California, *In re Parker*, 2018 Bankr. LEXIS 239 (Bankr. N.D. Cal. Jan. 30, 2018), which purportedly deals with this issue directly. However, G4S's reliance on that case mischaracterizes the relationship between G4S and G4S Ecuador. Unlike the attorney in *Parker* who provided legal advice relating to the collection of a prepetition debt, G4S is a parent company that has near 100% control of its subsidiary. While the attorney in *Parker* gave his advice and the client was free to accept or implement that advice as it saw fit, G4S's parent-subsidiary relationship with G4S Ecuador carries with it the ability of G4S to direct the affairs of G4S Ecuador as it sees fit. Not only were G4S's in-house and external counsel involved in the communications, but individuals who managed the business aspects of the issue as well. G4S's theory is predicated on an assertion that the only relevant communications are those relating to the issuance of legal advice reflected in the privilege log. However, Debtors neither know whether the communications in the privilege log in fact contain legal advice, nor whether those communications are the only communications that exist, written or oral. Those are matters for further discovery and, perhaps, motion practice.

2. G4S's Reliance on *LaMonica* Is Inapposite

Defendant's reliance on a decision by Judge Garrity, *LaMonica v. CEVA Grp. PLC (In re CIL Ltd.)*, 582 B.R. 46 (Bankr. S.D.N.Y. 2018), is also misplaced. In *LaMonica*, the Court was adjudicating an adversary proceeding based on claims of fraudulent transfer. As Judge Garrity held, Congress failed to express an affirmative intent for Sections 548 and 550 of the Bankruptcy Code to be applied extraterritorially, limiting those sections to their terms. *LaMonica*, 582 B.R. at 92. Yet, G4S relies on this case to argue that Section 362, which courts consistently apply

extraterritorially, should not apply here because G4S Ecuador is a separate subsidiary. Additionally, Judge Garrity's holding with respect to the corporate relationship of the defendants was solely in relation to plaintiffs' conversion claim. *Id*. at 122-23. In fact, he dismissed plaintiffs' automatic stay claim—which was alleged only with respect to directors of the defendants—on the grounds that plaintiffs' amended complaint did not allege that the directors took any actions after the petition date. *Id.* at 111-12.

II. The Automatic Stay Can and Should Be Applied Extraterritorially

Contrary to Defendants' assertions, Debtors are not seeking to pierce G4S's corporate veil by suing G4S. Rather, they seek only for the Court to order a parent company, over which it clearly has jurisdiction, to stop its involvement in its foreign subsidiary's violation of the automatic stay. Because Section 362 of the Bankruptcy Code has extraterritorial effect, this court has the power to prevent parties before it from employing their foreign subsidiaries to violate the automatic stay.

It is well-settled that the automatic stay of the Bankruptcy Code applies extraterritorially. *In re Ampal-American Israel Corp.*, 562 B.R. 601, 612 n. 12 (Bankr. S.D.N.Y. 2017) ("In addition, Courts have held that the automatic stay applies extraterritorially…because the automatic stay protects the bankruptcy court's exclusive *in rem* jurisdiction over 'property of the estate' from dismemberment by creditors."); *In re Soundview Elite, Ltd.*, 503 B.R. 571, 584 (Bankr. S.D.N.Y. 2014) ("U.S. law is clear that immediately upon the filing of the Debtors' chapter 11 petition, the U.S. automatic stay became effective, both in the U.S. and extraterritorially."). Additionally, the automatic stay exists to protect the estate from a "chaotic and uncontrolled scramble for the [d]ebtor's assets in a variety of uncoordinated proceedings in different courts." *In re Nakash*, 190 B.R. 763, 768 (Bankr. S.D.N.Y. 1996) (quoting *In re Frigitemp Corp.*, 8 B.R. 284, 289 (S.D.N.Y.

1981)). This is intended to protect and preserve the debtors' estate and the jurisdiction of the bankruptcy court so that it may administer the debtors' estate in an orderly fashion. *Id.*

It would contradict the purpose of the Bankruptcy Code and the law of this Circuit if a U.S. entity, which is subject to jurisdiction in this district, could simply take actions through its foreign subsidiaries that it otherwise could not take on its own. G4S, through an intermediate holding company, indirectly holds 99.9% of the ownership interest in G4S Ecuador, and is in turn part of a group of G4S entities in the Americas. While G4S would clearly be in violation of the stay if it were to try to collect a prepetition debt, it does not follow that it would then be able to direct or encourage its Ecuadorean subsidiary, or any other subsidiary, to collect that same debt. For this reason, the Court should not dismiss Debtors' claims. *See In re Arcapita Bank B.S.C.(c)*, 575 B.R. 229, 251-52 (Bankr. S.D.N.Y. 2017) (denying motion to dismiss because Section 362 applies extraterritorially); s*ee also Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (Picard v. Maxam Absolute Return Fund, L.P.)*, 474 B.R. 76, 82 (S.D.N.Y. 2012) (noting that the court had the power to enjoin extraterritorial violations of the automatic stay through § 105(a)). To not enjoin such actions would open debtors up to potential violations of the automatic stay worldwide, in which a U.S. company subject to the automatic stay could take whatever actions it sees fit through a foreign subsidiary.

Moreover, the relief being sought by Debtors is similar to orders sought and granted in other areas of law. For example, in trademark and copyright cases, when a court enters an order against an entity, the order enjoins its subsidiaries and affiliates as well, regardless of location. *See e.g., Alibaba Grp. Holding Ltd. v. Alibabacoin Found.,* 2018 WL 5118638 at *7 (S.D.N.Y. Oct. 22, 2018) (issuing a preliminary injunction enjoining defendants' affiliates and subsidiaries, and all those in active concert or participation with them or having knowledge of the causes of action,

from enabling or assisting the defendants in the impermissible use of trademarks); *Michael Grecco Prods. Inc. v. GlowImages Inc.*, 2020 WL 1866172 (D. Del. Apr. 6, 2020) (endorsing an order that enjoined defendant and its subsidiaries and affiliates from infringing upon a copyright). Similarly, courts have applied the Sherman Act both to parent companies and their foreign subsidiaries. *See Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 765 (1993) (exercising Sherman Act jurisdiction over British reinsurers which were subsidiaries of American corporations, noting that the interests of the U.K. were diminished where the parties are subsidiaries of American corporations); *Eskofot A/S v. E.I. Du Pont De Nemours & Co.*, 872 F.Supp. 81, 85 (S.D.N.Y. 1995) (finding allegations that actions of an American company and its British subsidiary violated the Sherman Act were adequately pled); *Trugman-Nash, Inc. v. New Zealand Dairy Bd.*, 942 F. Supp. 905, 915-17 (S.D.N.Y. 1996) (denying motion to dismiss in its entirety where plaintiffs stated a Sherman Act claim against a foreign company and its subsidiary corporations). With respect to another area of law—the Foreign Corrupt Practices Act—while the statute does not expressly extend to foreign subsidiaries of U.S. companies, the government's published guidance states that a parent company can be held liable for the conduct of a foreign subsidiary if the government determines that there is a traditional agency relationship between the parent and subsidiary. *See* U.S. Dep't of Justice & SEC, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (Nov. 14, 2012), at 27. This relationship is based on factors such as "the parent's control—including the parent's knowledge and direction of the subsidiary's actions, both generally and in the context of the specific transaction." *Id.* The relief sought from Debtors here is no different from the relief granted in the rulings in these cases.

CONCLUSION

Debtors' Amended Complaint adequately pleads the required elements to state a claim for violation of the automatic stay and clearly alleges that G4S was involved in the decision to violate

the stay. Therefore, Debtors have met all the pleading requirements under the Federal Rules of Civil Procedure and relevant case law. For that reason, and those mentioned above, Debtors respectfully request that the Court deny G4S's Motion to Dismiss in its entirety.

Dated: September 30, 2020

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