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

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

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANT'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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In its Order dated October 1, 2020, the Court directed counsel for the plaintiffs to file a supplemental brief addressing *In re McLean Industries, Inc.*, 68 B.R. 690 (Bankr. S.D.N.Y. 1986) (“*McLean I*”) and *In re McLean Industries, Inc.*, 76 B.R. 291 (Bankr. S.D.N.Y. 1987) (“*McLean II*”). 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 supplement to the Opposition to Defendant G4S Secure Solutions International’s (“G4S”) *Motion to Dismiss Amended Complaint* [Dkt. No. 16] and accompanying memorandum of law (“Def. Br.”).

PRELIMINARY STATEMENT

Debtors have alleged in the Amended Complaint that G4S has participated in the attempts by its 99.9%-owned subsidiary, G4S Ecuador, to collect amounts owed by Debtors prepetition. These allegations closely mirror the facts in the *McLean* cases. There, GAC Marine Fuels, Ltd., a UK company, through its U.S. agent, initiated actions in Hong Kong and Singapore to seize certain vessels owned by debtors, U.S. Lines, Inc. and its affiliates. After determining that it had personal jurisdiction over GAC Marine,³ the Court enjoined GAC Marine from interfering with the debtors’ assets, and subsequently sanctioned GAC Marine both for violating the automatic stay and for violating the terms of the injunction. *McLean I* and *II* clearly demonstrate that this Court has the power to enforce the automatic stay against G4S and affirm that Debtors have clearly stated a claim in the Amended Complaint.

² All capitalized terms shall have the meaning ascribed in Debtors’ Amended Complaint (Dkt. No. 15).

³ Debtors do not address *McLean*’s jurisdictional analysis because jurisdiction over G4S is clear and uncontested.

ARGUMENT

I. *McLean I* and *McLean II* Demonstrate that the Court Has the Power to Enforce the Automatic Stay Against G4S

The Amended Complaint alleges that G4S has violated the automatic stay by participating in its foreign subsidiary's efforts to collect a prepetition debt. *McLean I* and *McLean II* clearly hold that a court may hold a party in contempt for its extraterritorial violations of the automatic stay. *McLean I*, 68 B.R. 690, 700-701 (Bankr. S.D.N.Y. 1986) (holding GAC Marine in contempt of court for violating the automatic stay by arresting ships in Hong Kong and Singapore); *McLean II*, 76 B.R. 291, 297 (Bankr. S.D.N.Y. 1987) (upholding the same); *see also 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."). Indeed, "the notion that contempt should not be found where the violation takes place overseas ... is belied by both 28 U.S.C. § 1334(d) and 11 U.S.C. § 541 which speak of the debtor's property 'wherever located' and vest ... the bankruptcy court ... with exclusive jurisdiction over it." *McLean II*, 76 B.R. at 296. Just as GAC Marine was held in contempt of court for interfering with debtor's property in Hong Kong and Singapore, *McLean I*, 68 B.R. at 692, so too may the Court prevent G4S from violating the automatic stay by interfering with Debtors' assets in Ecuador.

The fact that the prepetition debt being pursued is owed to G4S Ecuador in the first instance does not shield G4S from liability for its participation in efforts to collect that debt. G4S holds 99.9% of the ownership interest in G4S Ecuador through an intermediate holding company. Any

effort by G4S to direct, encourage, or otherwise cause G4S Ecuador to violate the automatic stay has the same effect as if G4S had done so itself.

In *McLean*, the court found that GAC Marine violated the automatic stay when it ordered its agents in Hong Kong and Singapore to seize vessels owned by US Lines and its affiliates. This is no different from G4S participating in its subsidiary's decision to discontinue its performance under the Facility Agreement in violation of the automatic stay. Debtors plausibly plead that G4S participated in some way in G4S Ecuador violating the automatic stay, including the possibility that G4S advised or encouraged G4S Ecuador to withhold services and take actions to collect the prepetition debt. Rather than use an agent, as GAC Marine did in *McLean*, G4S merely opted to use its subsidiary to carry out its will.

II. Debtors Have Clearly Stated a Claim in Light of *McLean I* and *McLean II*

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). *McLean I* and *II* squarely find that a party over whom a US court has jurisdiction can be held in contempt of court for violating the automatic stay for actions taken in a foreign jurisdiction. *McLean I*, 68 B.R. at 700-701; *McLean II*, 76 B.R. at 297. The Amended Complaint pleads facts and evidence showing that G4S was involved with G4S Ecuador's decision to violate the automatic stay and that the timing of the communications between G4S and its subsidiaries coincides with the dates of each of the notices provided by Debtors to G4S Ecuador (the “Stay Notices”), supporting a plausible claim that G4S violated the automatic stay.

In both *McLean I* and the case at hand, it is indisputable that the automatic stay was in effect at the time of the violation and that the property at issue was property of the estate. In

McLean I, the automatic stay arose to protect the US Line's assets on November 24, 1986. *McLean I*, 68 B.R. at 691. Despite being aware of the automatic stay, GAC Marine commenced its *in rem* admiralty actions to seize US Line's ships in Hong Kong on December 4, 1986 and in Singapore on December 8, 1986. *Id.* at 692.

Like GAC Marine in *McLean*, G4S interfered with property of the estate while the automatic stay was in effect. 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 same day, G4S Ecuador threatened to discontinue its performance under the Facility Agreement unless certain prepetition debts were paid in full. Debtors informed G4S Ecuador that such action would be improper through the Stay Notices, which included copies of the Automatic Stay Order. Debtors' counsel also had conversation with Regional Counsel for G4S Latin America and Caribbean, who had discussions with G4S. At the same time G4S Ecuador received the Stay Notices, it engaged in conversations with G4S, and shortly thereafter G4S Ecuador began making attempts to collect the prepetition debt and terminated the Facility Agreement.

Both GAC Marine and G4S took extrajudicial actions that constitute a violation of the respective automatic stays. GAC Marine seized US Line's ships in Hong Kong and Singapore, depriving US Line of "the use of its vessels in the conduct of its business." *McLean I*, 68 B.R. 694. Similarly, here, G4S may have directed, encouraged, or otherwise caused G4S Ecuador to refuse to continue its obligations under the Facility Agreement, depriving Debtors of the benefits guaranteed to it in Ecuador by the Facility Agreement. It also may have directed, encouraged, or otherwise caused G4S Ecuador to conduct a mediation hearing in which it demanded immediate payment of the prepetition debt and made threats to commence legal actions in the Ecuadorean

courts. In so doing, G4S ignored section 362 of the Bankruptcy Code, the Automatic Stay Order, and the Stay Notices.

Although the nature and extent of G4S's participation in G4S Ecuador's efforts to collect prepetition debts from Debtors is yet to be illuminated by discovery, it is clear from the privilege log produced by G4S that G4S participated in some way. The temporal coincidence of the communications between G4S and G4S Ecuador and the efforts to collect the prepetition debt is sufficient to establish a plausible claim that G4S itself violated the automatic stay. As such, the Motion to Dismiss should be denied.

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 violation of the stay. *McLean* I and II clarify the adequacy of Debtors' pleadings through factual parallels. *McLean* I and II also demonstrate the Court's power to enforce the automatic stay for extraterritorial actions. For that reason, and for the reasons stated above and in Debtors' opposition to G4S's Motion to Dismiss, Debtors respectfully request that the Court deny G4S's Motion to Dismiss in its entirety.

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