

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : Chapter 11
:
SOUTHERN AIR : Case No. 12-12690 ()
HOLDINGS, INC., et al., :
:
Debtors.1 : Joint Administration Requested
:
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MOTION OF DEBTORS FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) FOR AUTHORITY TO PAY
(A) CERTAIN EMPLOYEE OBLIGATIONS AND (B) PREPETITION
CLAIMS OF INDEPENDENT CONTRACTORS AND (II) AUTHORIZING AND
DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS PURSUANT
TO SECTIONS 105(a), 363(b), AND 507(a) OF THE BANKRUPTCY CODE

Southern Air Holdings, Inc. ("Holdings") and its affiliated debtors in the above-
referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"),
submit this motion (the "Motion") and, in support thereof, respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C.
§§ 1334(b) and 157, and the Amended Standing Order of Reference from the United States
District Court for the District of Delaware, dated as of February 29, 2012. This 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.

1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are:
(i) Southern Air Holdings, Inc., 6605; (ii) Cargo 360, Inc., 4233; (iii) Southern Air Inc., 2187; (iv) Air Mobility Inc.,
3824; (v) 21110 LLC, 3761; (vi) 21111 LLC, 8100; (vii) 21221 LLC, 1567; (viii) 21550 LLC, 8103; (ix) 21576
LLC, 6341; (x) 21590 LLC, 8105; (xi) 21787 LLC, 0617; (xii) 21832 LLC, 7893; (xiii) 23138 LLC, 7192;
(xiv) 24067 LLC, 6360; (xv) 46914 LLC, 0322; (xvi) Aircraft 21255, LLC, 5500; (xvii) Aircraft 21380, LLC, 1753;
and (xviii) CF6-50, LLC, 9733. The address for all Debtors is 117 Norwalk, Connecticut 06850.



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Background

2. On the date hereof (the “Petition Date”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors (“Creditors’ Committee”) has been appointed in these chapter 11 cases.

3. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of the chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

The Debtors’ Businesses

4. Southern Air Inc. (“Southern Air”), the Federal Aviation Administration certificated, indirect subsidiary of Holdings, is an experienced provider of long-haul, wide-body air cargo transportation services. Southern Air operates a fleet of eleven aircraft, including four Boeing 777s, four Boeing 747-400s, and three Boeing 747-200s. Southern Air’s staff and flight operations are positioned around the world to facilitate global operations for both governmental and commercial customers. Holdings is the direct or indirect parent company of the other Debtors.

5. For the twelve months ended July 31, 2012, the Debtors’ unaudited and consolidated financial statements reflected revenues of approximately \$428.2 million and a net loss of \$159.8 million. As of July 31, 2012, the Debtors’ unaudited and consolidated financial statements reflected assets totaling approximately \$206.9 million and liabilities totaling approximately \$486.5 million.

6. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to this chapter 11 filing is contained in the *Declaration of Daniel J. McHugh in Support of the Debtors' Chapter 11 Petitions and First Day Relief*, filed contemporaneously herewith.

Employee Obligations

7. For purposes of this Motion, "Employees" shall include all persons entitled to, as of the Petition Date, compensation, benefits, reimbursement, or any other similar payment as a consequence of being employed by the Debtors and shall not include independent contractors ("Employees").

8. As of the Petition Date, the Debtors employ approximately 611 Employees. The majority of these Employees are retained by Southern Air, with a handful of executives having entered into employment agreements with Holdings. All Employees, however, are compensated by and receive benefits from Southern Air. Among the Employees, 349 are aircraft pilots and flight engineers (the "Crewmembers") and 262 are non-crewmembers working on various other aspects of the Debtors' businesses (the "Non-Crewmembers"). Employees are essential to the continued operation of the Debtors' businesses and, thus, payment of Employee wages and related obligations is critical to the Debtors' reorganization efforts.

9. Accordingly, to maintain the morale of their workforce, ensure the stability of such workforce, and minimize the personal hardship that Employees would suffer if not paid when due, the Debtors seek authority to pay certain Employee-related obligations, whether incurred prepetition or postpetition, including: Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Employee Benefit Plan Obligations, Union Dues,

Severance Obligations, and payment of any fee or cost associated with the foregoing (each as defined below).

A. Payroll and Related Obligations

Wage Obligations

10. In the ordinary course of their businesses, the Debtors pay Employees' wages, salary, and related compensation on a semi-monthly basis ("Wage Obligations"). In the 2011 calendar year, the Debtors' Wage Obligations totaled approximately \$55,806,742.

11. Crewmembers are compensated pursuant to the collective bargaining agreement between Southern Air and the Southern Air Crew Group, dated as of August 1, 2006, as subsequently amended (the "CBA"), which establishes payment structures based on seniority. Non-Crewmembers, on the other hand, are categorized as salaried employees ("Salaried Employees"), hourly employees ("Hourly Employees"), or salaried non-exempt employees ("Salaried Non-Exempt Employees"). Salaried Employees receive a base annual salary, Hourly Employees are compensated according to hours worked, and Salaried Non-Exempt Employees are provided a fixed salary but are eligible to accrue overtime payment. Both Crewmembers and Non-Crewmembers may be entitled to overtime payments. In addition, both Crewmembers and Non-Crewmembers required to travel in connection with performing their responsibilities are entitled to supplemental per-diem payments in an amount of \$60 per day spent traveling.

12. The Debtors estimate that, as of the Petition Date, approximately four (4) Crewmembers are individually owed Wage Obligations in excess of \$11,725 (the "Prepetition Wage Cap"). The Debtors' aggregate liability to such Crewmembers for Wage Obligations in excess of \$11,725 is approximately \$7,700, the majority of which is attributable to accrued

overtime. Payment of the Crewmembers' Wage Obligations, including amounts in excess of \$11,725, is of vital importance to the Debtors because they are currently in the process of renegotiating the terms of the CBA with the Crewmembers' union, the United Brotherhood of Teamsters Local 1224 (the "Union"). The inability to satisfy all of the Crewmembers' Wage Obligations could irreparably harm the Debtors' businesses and their reorganization efforts by disrupting negotiations with the Union and creating upheaval in the Debtors' relationship with the Union.

Employee Reimbursement Obligations

13. In addition to Wage Obligations, the Debtors customarily reimburse their Employees for business expenses incurred in the ordinary course of their employment, including, without limitation, business-related travel, lodging, and other similar expenses ("Employee Reimbursement Obligations"). Employees incur these business expenses with the understanding and expectation that they will be reimbursed. It is difficult to determine the precise amount of Employee Reimbursement Obligations at any moment in time because Employees are often entitled to reimbursements that they have not yet submitted to the Debtors. Nevertheless, the Debtors estimate that, as of the Petition Date, approximately \$15,000 in Employee Reimbursement Obligations is outstanding.

Payroll Taxes

14. During each pay period, the Debtors make deductions from the wages paid to all Employees for obligations such as city and state income taxes, federal income taxes, social security, and Medicare contributions (collectively, the "Payroll Taxes"). The Debtors then remit the Payroll Taxes to the applicable governmental authority. The Debtors submit that deductions made on account of Payroll Taxes constitute property held *in trust* for the applicable

governmental authority, and, therefore, are not property of the Debtors' estates and not available for satisfaction of creditors' claims. As of the Petition Date, the Debtors have remitted all Payroll Taxes for the payroll period ended September 30, 2012.

B. Employee Benefit Plan Obligations

15. In accordance with applicable laws and regulations and in connection with their business practices, the Debtors have established various benefit plans and policies for the benefit of their Employees, including, without limitation: (a) certain paid time off benefits, which include: vacation days, sick days, personal days, and holidays (collectively, the "PTO Plans"); (b) certain insurance benefits, which include: (i) medical and prescription drug plans, (ii) a stop loss policy for the medical and prescription drug plans, (iii) benefits relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), (iv) an employee assistance program, (v) dental insurance, (vi) vision insurance, (vii) basic life insurance, (viii) accidental death and dismemberment insurance, (ix) certain supplemental life insurance policies, and (x) disability benefits (collectively, the "Health and Welfare Plans"); and (c) the option to enroll in a 401(k) plan and in two flexible spending accounts (the "Optional Enrollment Plans" and together with the PTO Plans and the Health and Welfare Plans, the "Employee Benefit Plan Obligations"). The Employee Benefit Plan Obligations are discussed in more detail below.

PTO Plans

16. Under the Debtors' PTO Plans, Employees receive their full wages for personal days, sick days, certain holidays, and vacation. Non-Crewmembers accrue their annual vacation entitlement on the first calendar day of each year and must use all vacation days by the end of such year. Pursuant to the CBA, Crewmembers accrue vacation days monthly and may

carry over vacation days from year to year up to a maximum of ten (10) days and fifteen (15) days after five (5) years. In accordance with the Debtors' prepetition practices, Employees receive compensation on account of unused vacation days only if they are terminated or furloughed by the Debtors. With the exception of accrued vacation, no other PTO plan entitles Employees to compensation. The Debtors believe that, as of the Petition Date, no amounts are owed under the PTO Plans. In connection with their ongoing reduction in force, however, the Debtors intend to terminate or furlough a number of Employees during the pendency of these chapter 11 cases. As noted above, such Employees would be entitled to compensation for any unused vacation days under the PTO Plans.

Health and Welfare Plans

17. Mercer. As noted above, the Debtors maintain Health and Welfare Plans for their Employees and use Mercer LLC ("Mercer"), a provider of health care program consulting, brokerage, communication, and administration solutions, to serve as their benefits advisor for such Health and Welfare Plans. Mercer works with the Debtors to develop benefit plan strategies by assisting with the annual benefits renewal process, tracking claims (if applicable), ensuring that the Debtors' various policies are in compliance with applicable laws, understanding and preparing for health reform, and providing ongoing general support relating to the Health and Welfare Plans. The Debtors owe no amounts to Mercer for its services because under the various Health and Welfare Plans the applicable insurance carriers compensate Mercer for its services to the Debtors.

18. Medical, Dental and Vision Plans. The Debtors currently provide medical, dental, and vision benefits for Employees. Employees are eligible to participate in such plans if they work at least thirty-three (33) hours per week. By these standards, all but one

of the Debtors' current Employees are eligible to participate in the medical, dental, and vision plans.

19. The Debtors provide two (2) comprehensive medical plans for their employees, both of which are provided through United Healthcare ("United"). The plans have the same coverage and vary only in terms of deductible and premium amounts. In conjunction with the medical plan, the Debtors offer Employees prescription drug benefits through Medco Health Solutions ("Medco"). The Debtors are self-insured for medical and prescription drug expenses but maintain a stop-loss insurance policy ("Stop Loss Insurance") with Sun Life Assurance Company of Canada ("Sun Life") that covers any medical or prescription drug claim that exceeds \$150,000 per claim per year, for which they pay a monthly premium. Under the medical plans, the Employees or their health care providers, as applicable, submit claims to and are paid by United. United then reports these payments to the Debtors and the Debtors reimburse United, in full, on a weekly basis. Pursuant to the Stop Loss Insurance, Sun Life will reimburse the Debtors for any amounts paid to United over \$150,000 per claim per year. Additionally, the Debtors pay monthly fees to United to administer the medical plan and related claims processing ("ASO Fees"). The Debtors partially offset the cost of the ASO fees through Employee payroll deductions. As of the Petition Date, the Debtors estimate that they owe United approximately \$84,000 in ASO Fees and \$119,000 on account of medical and prescription drug claims. Also, as of the Petition Date, the Debtors owe Sun Life approximately \$20,000 on account of the Stop Loss Insurance.

20. In addition to the medical plan with United, for the term June 2010–May 2011, the Debtors offered medical and prescription drug benefits to their Employees through Anthem BlueCross Blue Shield ("Anthem"). Although the insurance term ended in May 2011,

the terms of the policy provided that there would be a run off period from May 2011 through May 2013 in which Anthem would pay certain claims submitted by the Debtors' Employees and then periodically invoice the Debtors for reimbursement. As of the Petition Date, the Debtors have an outstanding bill of \$3,810 from Anthem on account claims paid during the run off period.

21. The Debtors have engaged Ceridian Corporation ("Ceridian") to administer any benefits owed to Employees under COBRA. COBRA provides workers who lose their health benefits and their families the right to continue certain benefits provided for by their employers. Pursuant to COBRA, all of the Debtors' Employees who are laid off or terminated are eligible to continue their benefits. The Debtors pay Ceridian a monthly fee to administer the program. As of the Petition Date, fees on account of COBRA benefits are outstanding in an approximate amount of \$5,300.

22. The Debtors participate in a dental plan through Delta Dental PPO Plus Premier ("Delta") and a vision plan through Vision Service Plan ("VSP"). With respect to the dental plan, the Debtors make monthly premium payments to Delta and, in turn, Delta administers all Employee claims. The Debtors also make monthly premium payments to VSP for the vision plan. The Debtors partially offset the premium payments for the dental and vision plans through Employee payroll deductions. The Debtors estimate that, as of the Petition Date, \$35,100 is outstanding on account of the dental plan and \$7,500 is outstanding on account of the vision plan.

23. EAP. The Debtors also maintain an employee assistance program ("EAP") through Magellan Health Services ("Magellan"). The program is intended to help Employees deal with personal problems that may impact their work performance or health.

EAP benefits typically include short-term counseling, referral services, and other similar benefits. As of the Petition Date, the Debtors owe approximately \$1,000 in fees to Magellan on account of EAP.

24. Basic Life and AD&D Insurance. In addition to the aforementioned benefits, the Debtors maintain and fund basic life insurance (“Basic Life Insurance”) and accidental death and dismemberment insurance (“AD&D Insurance”) for their Employees in the event of serious illness, injury, or death through Hartford Life and Accident Insurance Company (“The Hartford”). All full-time Employees are eligible to receive Basic Life Insurance and AD&D Insurance. Under the Debtors’ Basic Life Insurance, the Employee’s designee receives an amount equal to that Employee’s annual base salary or \$50,000, whichever is higher, upon the Employee’s death. The AD&D Insurance is equal to the Basic Life Insurance amount and, in addition, if a serious accident takes an Employee’s sight, limb, or life, such Employee (or his/her designee) would receive added compensation, as provided for in their AD&D Insurance. As of the Petition Date, approximately \$14,000 is outstanding on account of the Basic Life Insurance and the AD&D Insurance.

25. Supplemental Life Insurance Programs. Employees also have the option of purchasing additional Basic Life Insurance (“Supplemental Life Insurance”), additional AD&D Insurance (“Supplemental AD&D Insurance”), and supplemental dependent life insurance (“Supplemental Dependent Life Insurance” and, together with the Supplemental Life Insurance and the Supplemental AD&D Insurance, the “Supplemental Life Insurance Programs”) at their own cost through The Hartford. The Debtors make premium payments directly to The Harford in the first instance and participating Employees pay the applicable

premium amounts through payroll deductions. As of the Petition Date, approximately \$18,000 is outstanding on account of the Supplemental Life Insurance Programs.

26. Disability Benefits. The Debtors also maintain short-term and long-term disability insurance (the “Disability Benefits”) for all Employees through The Hartford. The Debtors pay the premium amounts due for all executives on a monthly basis, which total approximately \$7,000 per year. The short term disability plan for executives provides for 70% of an executive’s base pay for twenty-six (26) weeks; the Debtors contribute the remaining 30% to assure the executive receives 100% of his base pay for twenty-six (26). All other Employees participating in the short term disability plan are eligible to receive 66.66% of their base pay for twenty-six (26), with a maximum weekly benefit of \$1,000. The long-term disability plan is the same for all Employees, offering 60% of base pay with a maximum monthly benefit of \$6,000. Employees—other than executives—that choose to participate in the Disability Benefits, pay the premium amounts through payroll deductions and the Debtors make monthly payments directly to The Hartford on behalf of the Employees. As of the Petition Date, the Debtors owe approximately \$58,000 to The Hartford on account of the Disability Benefits.

401(k) Plan and Flexible Spending Account

27. In addition to offering the medical related benefits described above, the Debtors offer Employees the option to participate in a 401(k) savings program (the “401(k) Plan”), designed to provide benefits upon retirement, termination, death, or disability. The 401(k) plan is available to all Employees starting on the first of the month following thirty (30) days of employment, with a new enrollment period every year. As of the Petition Date, 362 Employees participate in the 401(k) Plan. Each year, participating Employees may choose to contribute from 1% to 15% of pre-tax annual compensation up to the maximum amount

allowable by the Internal Revenue Code. Employees over the age of fifty (50) years old may make contributions up to the \$5,500 per year cap set by the Internal Revenue Service, as part of a “catch up” provision. The Debtors engage Great West Life & Annuity Insurance Company (“Great West”) to administer the 401(k) Plan; any contribution made by an Employee is withheld from the Employee’s wages and then remitted to Great West. The Debtors pay Great West a periodic fee to manage the plan, in the amount of approximately \$3,200 per year. The Debtors do not participate in company matching contributions. As of the Petition Date, the Debtors hold and have not remitted approximately \$87,000 in the aggregate from Employees’ wages on account of the 401(k) Plan. Also as of the Petition Date, the Debtors estimate that they owe Great West approximately \$2,400 in administrative fees on account of the 401(k) Plan.

28. Employees also have the option to enroll in two (2) flexible spending accounts through Ceridian (each a “FSA”): (a) the healthcare related FSA, which provides a participating Employee with pre-tax reimbursement for qualified health care expenses not covered by insurance, and (b) the dependent care related FSA, which provides pre-tax reimbursement for a participating Employees’ eligible dependents’ day care needs. Under the terms of the FSAs, during the annual enrollment period, Employees may choose designate an amount of their pre-tax wages or salary towards the FSAs, which can then be used for eligible health care expenses incurred. Participating Employees submit receipts for such eligible expenses to and are paid by Ceridian, which then withdraws any amounts paid on account of the FSAs directly from the Debtors’ operating account on a weekly basis. Currently, forty (40) Employees are enrolled in the FSAs. The Debtors remit to Ceridian approximately \$286 per

month in fees for administering the plan. The Debtors estimate that, as of the Petition Date, \$1,000 in fees and/or payments are outstanding on account of the FSAs.

C. Union Dues

29. All Crewmembers are members of and owe dues to the Union. As part of their prepetition business practices, the Debtors withhold approximately 1.56% of each Crewmember's paycheck per month to pay union dues to the Union (the "Union Dues") on behalf of the Crewmember, which totals approximately \$30,000 per month. The Debtors remit the withheld funds to the Union the first week of the month following the withholding. The Debtors estimate that, as of the Petition Date, they hold and have not remitted approximately \$31,000 in Union Dues.

D. Severance Obligations

30. Finally, the Debtors also provide severance benefits to certain Non-Crewmembers (the "Severance Obligations"). Per the Debtors' prepetition practices, a terminated Non-Crewmember may be offered severance under a Separation and Release Agreement ("Severance Agreement") pursuant to which the Non-Crewmember (a) releases all claims against Southern Air and its affiliates and (b) agrees not to disclose any confidential or proprietary information learned or acquired while employed by Southern Air, in exchange for an amount equal to four (4) weeks of such Non-Crewmembers' current wages. A number of Non-Crewmembers are employed pursuant to employment contracts containing severance provisions. The aforementioned Severance Obligations do not include severance paid pursuant to Non-Crewmember employment contracts and are not provided to directors, officers, or individuals "in control" of the Debtors. The Debtors believe that the failure to honor prepetition Severance Obligations and inability to enter into postpetition Severance Agreements would

depress Employee morale, result in reputational harm within their competitive environment, and unnecessarily expose the Debtors to liability, all of which could irreparably harm the Debtors' value as a going concern.

31. As of the Petition Date, the Debtors owe approximately \$93,600 on account of prepetition Severance Obligations. Moreover, several terminated Non-Crewmembers have been provided Severance Agreements, but did not execute such agreements prior to the Petition Date. If permitted to enter into Severance Agreements, such Employees would receive approximately \$55,300 in the aggregate on account of prepetition Severance Obligations. The Debtors believe that no Employee will be entitled to an amount greater than \$11,725 on account of prepetition Severance Obligations.

32. In connection with their ongoing reduction in force, the Debtors intend to terminate a number of Employees during the pendency of these chapter 11 cases. In addition to Severance Obligations, such Non-Crewmembers may also be entitled to Wage Obligations, Employee Reimbursement Obligations, and/or compensation for unused vacation days.

Independent Contractor Obligations

33. In addition to retaining Employees, as part of their business practices and policies, the Debtors utilize third-party contractors to perform services necessary for the operation of their businesses (the "Independent Contractors"). The Independent Contractors are either contracted individually or through agencies that provide the Debtors with additional labor services. As of the Petition Date, Southern Air contracts with approximately thirty-five (35) Independent Contractors individually and obtains the balance of their Independent Contractors through various agencies. The Independent Contractors provide key maintenance, operational, or administrative services. The Debtors will contract Independent Contractors if, in the exercise

of their business judgment, they determine it would be more efficient and/or cost-effective to have Independent Contractors, rather than Employees, perform certain jobs and/or services. As such and as further described below, the Independent Contractors are an integral component of the Debtors' businesses.

34. The majority of Independent Contractors serve as loadmasters ("Loadmasters") or technical representatives ("Tech Reps"), both of which are positions crucial to the Debtors' air cargo transportation operations. Loadmasters supervise the loading of the Debtors' aircraft and perform calculations relating to the weight and balance of freight on the aircraft to ensure that the Debtors' operations comply with applicable civilian and military regulations. Tech Reps are specifically contracted to perform line maintenance, which requires a specialized skill set, including understanding aviation regulations, standards, and protocols. The Debtors seek to make payments to those Independent Contractors or the agencies providing the Independent Contractors that they believe are necessary or appropriate to assure the continuation of the critical services they provide (collectively, the "Independent Contractor Obligations"). The Independent Contractors submit timesheets on a monthly or weekly basis, depending on the agreement, but payment of Independent Contractor Obligations are made in line with payroll.

35. The satisfaction of Independent Contractor Obligations is integral to the Debtors' reorganization efforts. As noted above, the Debtors heavily depend on the expertise of the Independent Contractors to, among other things, keep the Debtors' aircraft within permissible center of gravity limits throughout flights, perform specialized maintenance on the aircraft, and assist with quality control. The Debtors also use the Independent Contractors to assist them in meeting the requirements imposed under operating leases or applicable laws and

regulations. Considering the nature of their jobs, Independent Contractors are integral to the safe and reliable performance of the Debtors' aircraft, which is vital to the Debtors' businesses.

36. The Debtors also believe it would be difficult to replace their Independent Contractors (whether contracted individually or through an agency). Much time was spent searching for Independent Contractors who understand the Debtors' business practices and policies and who are familiar with applicable aviation regulations. The Debtors believe that replacing the Independent Contractors would take, at a minimum, several weeks, which would disrupt their operations and harm reorganization efforts.

37. Additionally, as much as the Debtors depend on Independent Contractors, the Independent Contractors also depend on the Debtors. Many of these individuals rely on payments received from the Debtors for income. The Independent Contractors will likely be exposed to financial difficulties if the Debtors are not permitted to continue honoring the Independent Contractor Obligations, which may sever certain of Debtors' business relationships and potentially impair the Debtors' abilities to contract reliable personnel going forward.

38. Finally, some Independent Contractors may be able to assert a mechanic's or materialman's lien against the Debtors property if they have performed repair, construction, renovation, installation, or similar services or have provided materials to the Debtors. In such cases, applicable state law may grant such Independent Contractor a lien against the Debtors' property that was the subject of such services (whether or not that property is still in the possession or control of the Independent Contractor) to secure payment of the amounts owed by the Debtors to such Independent Contractor (collectively, the "Mechanic's and Materialmen's Lien Charges").

39. As of the Petition Date, the Debtors estimate that prepetition Independent Contractor Obligations owed to individuals total approximately \$114,000 and prepetition Independent Contractor Obligations owed to agencies total approximately \$126,000.

Relief Requested

40. By this Motion, the Debtors request, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code entry of (a) an interim order (the “Interim Order”) authorizing the Debtors to (i) pay outstanding prepetition Wage Obligations and Employee Reimbursement Obligations, subject to the Prepetition Wage Cap, (ii) pay all prepetition amounts due on account of Payroll Taxes, the Health and Welfare Plans, the Optional Enrollment Plans, and Union Dues, (iii) pay all prepetition claims of Independent Contractors, and (iv) continue to honor their Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Health and Welfare Plans, Optional Enrollment Plans, Union Dues, and payment of any fee or cost associated with the foregoing in the ordinary course of business during the period prior to the entry of a final order (the “Interim Period”); and (b) a final order (the “Final Order”) authorizing the Debtors to (i) pay outstanding prepetition Wage Obligations and Employee Reimbursement Obligations, (ii) honor prepetition Severance Obligations, (iii) continue existing business practices with respect to payment of Severance Obligations incurred postpetition, and (iv) compensate Employees terminated or furloughed postpetition for accrued and unused vacation days in accordance with the Debtors’ prepetition practices and policies.

41. In addition, as part of their cash management system, the Debtors maintain accounts at certain banks and other financial institutions (the “Banks”). The Debtors pay the Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Employee Benefit Plan Obligations, Union Dues, Severance Obligations, and Independent Contractor Obligations

on a periodic basis with funds drawn from these accounts or by electronic fund transfers, depending on the obligation. Accordingly, the Debtors also seek entry of an order authorizing and directing Banks to receive, process, honor and pay any check or electronic fund transfer from the Debtors' accounts, to the extent that such checks or transfers relate to the Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Employee Benefit Plan Obligations, Union Dues, Severance Obligations, or Independent Contractor Obligations discussed herein, whether such checks were presented before or after the Petition Date. The Debtors further seek authority to issue new postpetition checks or effect new electronic fund transfer requests on account of such obligations to replace any prepetition checks or electronic fund transfer requests that may have been dishonored or rejected as a result of the commencement of these chapter 11 cases. The Debtors further request that the Banks and any third party receiving payment from the Debtors be authorized and directed to rely on the representations of the Debtors as to which payments are authorized by the requested relief. Proposed interim and final orders are attached hereto as Exhibit A and Exhibit B, respectively (the "Proposed Orders").

**Payment of Prepetition
Employee Obligations Is Warranted**

42. As a result of these chapter 11 cases, the Debtors are prohibited from paying claims that arose before the Petition Date unless the Debtors receive specific authorization from the Court. However, pursuant to section 507(a)(4)(A) of the Bankruptcy Code, the Employees' claims for "wages, salaries, or commissions, including vacation, severance and sick leave pay" earned within 180 days before the Petition Date are afforded priority status to the extent of \$11,725 per employee. 11 U.S.C. § 507(a)(4)(A). Similarly, section 507(a)(5) of the Bankruptcy Code provides that employees' claims for contributions to

certain employee benefit plans are also afforded priority status to the extent of \$11,725 per employee covered by such plan, less any amounts paid pursuant to section 507(a)(4).

11 U.S.C. § 507(a)(5).

43. Furthermore, section 363(b)(1) of the Bankruptcy Code provides that a debtor, “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). Section 105(a) of the Bankruptcy Code provides that the Court “may 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).

44. The Debtors believe that many of their Employee-related obligations for the period prior to the Petition Date constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, these obligations must be paid in accordance with section 1129(a)(9) before any of the Debtors’ general unsecured obligations may be satisfied. Accordingly, accelerated payment of such claims at this time is appropriate and this Court is authorized to grant the relief requested.

45. To the extent that certain of the Debtors’ Employee-related obligations do not constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code or to the extent that any Employee is owed in excess of \$11,725, the Debtors submit that satisfaction and payment of such amount is necessary and appropriate, and may be authorized under sections 105(a) and 363(b) of the Bankruptcy Code pursuant to the “doctrine of necessity.” Courts in this Circuit and elsewhere have consistently held that under the “doctrine of necessity” the bankruptcy court can exercise its broad grant of equitable powers to permit payment of prepetition obligations when essential to the continued operation of the Debtors’ businesses. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section

105(a) provides a statutory basis for the payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity, *i.e.* whether the payment is essential to the continued operation of the business, is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to the confirmation of a reorganization plan).

46. Indeed, bankruptcy courts regularly rely on their authority under section 105(a) and the “doctrine of necessity” to grant the debtor in possession the discretionary authority to pay certain prepetition claims “where the payment is necessary to permit the effectuation of the rehabilitative purposes of the Bankruptcy Code.” *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W. D. Penn. 1993); *see also In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that a court may authorize payment of prepetition claims if such payment is essential to continued operation of the debtor); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing the payment of prepetition claims and confirming the “ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept”). As these courts have noted, the rationale for making payments to prepetition creditors under the “doctrine of necessity” is consistent with the paramount goal of chapter 11: facilitating the continued operation and rehabilitation of the debtor. . . .” *Ionosphere Clubs*, 98 B.R. at 176. Furthermore, Bankruptcy Rule 6003 recognizes that the payment of prepetition

obligations may be permissible within the first twenty-one (21) days of a case where doing so is “necessary to avoid immediate and irreparable harm.” FED. R. BANKR. P. 6003.

47. As described herein, it is essential to the continued operation of the Debtors’ businesses and the preservation of value for creditors that the services of the Employees be retained and that the morale of such Employees is maintained. If the checks issued or money transfers requested in respect of the Debtors’ Employee-related obligations are neither honored nor replaced, morale will deteriorate and the Employees will suffer extreme personal hardship. Consequently, it is critical that the Debtors have the authority, in their discretion and in the exercise of their sound business judgment, to continue the personnel policies, programs, and procedures that were in effect prior to the commencement of these chapter 11 cases. Payment of the Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Employee Benefit Plan Obligations, Union Dues, and Severance Obligations in accordance with the Debtors’ prepetition business practices, is in the best interest of the Debtors, their estates, and their creditors, and will enable the Debtors to continue to operate their businesses in an economic manner without disruption.

48. Accordingly, the Debtors seek authority, in their discretion and in the exercise of their business judgment, to pay the Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Employee Benefit Plan Obligations, Union Dues, and Severance Obligations described herein in accordance with the practices, programs, and/or policies that were in place before the Petition Date. In addition, the Debtors seek authority to honor and continue their practices, programs, and/or policies with respect to the Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Employee Benefit Plan Obligations, Union Dues, and Severance Obligations in the ordinary course of business.

49. Courts in this district have frequently approved the payment of prepetition claims for compensation and related benefits similar to those described herein. *See, e.g., In re AES E. Energy, L.P.*, Case No. 11-14138 (KJC) (Bankr. D. Del. Jan. 26, 2012) [Docket No. 119]; *In re Dallas Stars, L.P.*, Case No. 11-12935 (PJW) (Bankr. D. Del. Sept. 19, 2011) [Docket No. 47]; *In re DSI Holdings, Inc.*, Case No. 11-11941 (KJC) (Bankr. D. Del. July 19, 2011) [Docket No. 144]; *In re L.A. Dodgers LLC*, Case No. 11-12010 (KG) (Bankr. D. Del. June 28, 2011) [Docket No. 50]; *In re Elec. Components Int’l, Inc.*, Case No. 10-11054 (KJC) (Bankr. D. Del. Apr. 1, 2010) [Docket No. 37].²

**Payment of Prepetition Independent
Contractor Obligations Is Warranted**

50. As noted above, section 363(b) provides that “the trustee, 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). Section 105(a) of the Bankruptcy Code further provides that “[t]he court may 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).

51. To the extent that the Debtors’ Independent Contractor Obligations are prepetition claims, payment of such obligations is necessary and appropriate, and may be authorized under sections 105(a) and 363(b) of the Bankruptcy Code pursuant to the “doctrine of necessity.” Again, the “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the

² Because of the voluminous nature of the unreported orders cited in this Motion, they are not attached hereto; however, copies of these orders are available upon request of Debtors’ counsel.

relief requested herein. Accordingly, pursuant to section 105(a) and 363(b) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

52. The nature of the Debtors' businesses and the extent of their operations make it essential for them to keep their Independent Contractors and pay any prepetition obligations owed to them. As described above, the Debtors' failure to pay prepetition claims of the Independent Contractors will cause significant harm to the Independent Contractors, the Debtors, their estates, and all parties in interest.

53. The Debtors submit that the uninterrupted and continued performance of the Independent Contractors is critical to the Debtors' ability to provide safe and reliable air cargo transportation services during the pendency of these chapter 11 cases. A continued, efficient, and uninterrupted operation is of utmost importance to the Debtors' efforts to sustain customer confidence and maintain important business relationships throughout these chapter 11 cases and beyond. The Debtors enjoy long-standing, positive relationships with many of the Independent Contractors and the agencies providing Independent Contractors, and are confident in their abilities to perform in accordance with the highest level of skills and safety standards. Additionally, workers with an equivalent level of skill and knowledge would, in many cases, be difficult and costly for the Debtors to find and integrate into their operations. Indeed, the Debtors submit that significant training and time would be required to find and secure new Independent Contractors because of the high degree of specialization and certification required by the aviation's regulatory environment. Simply put, the Independent Contractors provide skills and services that are integral to the Debtors' ongoing and uninterrupted operations.

Reservation of Rights

54. Nothing contained herein is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or any

appropriate party in interest's rights to dispute any claim, or (c) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

The Debtors Satisfy Bankruptcy Rule 6003(b)

55. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty-one (21) days after the Petition Date. FED. R. BANKR. P. 6003(b). As described herein, the continued and uninterrupted service of current Employees and Independent Contractors is critical to the Debtors' business operations. The Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors, as described herein, and that Bankruptcy Rule 6003(b) has been satisfied

Waiver of Bankruptcy Rules 6004(a) and (h)

56. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

57. No trustee, examiner, or Creditors' Committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney's Office of the District of Delaware; (f) the United

States Transportation Command; (g) the Defense Logistics Agency - Energy; (h) Canadian Imperial Bank of Commerce, New York Agency (“CIBC”); (i) counsel to CIBC; (j) Oak Hill Capital Management (“Oak Hill”); (k) counsel to Oak Hill; (l) all lessors under aircraft operating leases with Southern Air; and (m) any other party directly affected by this Motion. The Debtors respectfully submit that such notice is sufficient under the circumstances.

No Previous Request

58. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: September 28, 2012
Wilmington, Delaware

/s/ M. Blake Cleary
M. Blake Cleary (No. 3614)
YOUNG CONAWAY
STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

Brian S. Rosen, Esq.
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

*Proposed Attorneys for the
Debtors and Debtors in Possession*

Exhibit A
Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

-----X
: **Chapter 11**
: **Case No. 12-12690 ()**
: **Jointly Administered**
: **Re: Docket No.**
-----X

**INTERIM ORDER (I) AUTHORIZING THE PAYMENT OF
(A) CERTAIN EMPLOYEE OBLIGATIONS AND (B) PREPETITION
CLAIMS FOR INDEPENDENT CONTRACTORS AND (II) AUTHORIZING
AND DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS
PURSUANT TO SECTIONS 105(a), 363(b), AND 507(a) OF THE BANKRUPTCY CODE**

Upon the motion, dated September 28, 2012 (the “Motion”),² of Southern Air Holdings, Inc. and its affiliated debtors, as debtors and debtors in possession (collectively, the “Debtors”), requesting entry of (a) an Interim Order authorizing the Debtors to (i) pay outstanding prepetition Wage Obligations and Employee Reimbursement Obligations, subject to the Prepetition Wage Cap, (ii) pay all prepetition amounts due on account of Payroll Taxes, the Health and Welfare Plans, the Optional Enrollment Plans, and Union Dues, (iii) pay prepetition claims of Independent Contractors, and (iv) continue to honor their Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Health and Welfare Plans, Optional Enrollment Plans, Union Dues, and payment of any fee or cost associated with the foregoing in the ordinary

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: (i) Southern Air Holdings, Inc., 6605; (ii) Cargo 360, Inc., 4233; (iii) Southern Air Inc., 2187; (iv) Air Mobility Inc., 3824; (v) 21110 LLC, 3761; (vi) 21111 LLC, 8100; (vii) 21221 LLC, 1567; (viii) 21550 LLC, 8103; (ix) 21576 LLC, 6341; (x) 21590 LLC, 8105; (xi) 21787 LLC, 0617; (xii) 21832 LLC, 7893; (xiii) 23138 LLC, 7192; (xiv) 24067 LLC, 6360; (xv) 46914 LLC, 0322; (xvi) Aircraft 21255, LLC, 5500; (xvii) Aircraft 21380, LLC, 1753; and (xviii) CF6-50, LLC, 9733. The address for all Debtors is 117 Glover Avenue, Norwalk, Connecticut 06850.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

course of business during the Interim Period; (b) a Final Order authorizing the Debtors to (i) pay outstanding prepetition Wage Obligations and Employee Reimbursement Obligations, (ii) honor prepetition Severance Obligations, (iii) continue prepetition practices with respect to payment of postpetition Severance Obligations, and (iv) compensate eligible Employees for accrued and unused vacation days; and (c) an Interim Order and Final Order authorizing and directing Banks to receive, process, honor, and pay any check or electronic fund transfer from Debtors' accounts, to the extent that such checks or transfers relate to any of the obligations described herein, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, as more fully set forth in the Motion; and upon consideration of the *Declaration of Daniel J. McHugh in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief*; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the Motion and the requested relief 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 Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; 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 relief requested in the Motion is in the best interest of the Debtors and their respective estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.

2. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement,³ pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, to pay prepetition Wage Obligations and Employee Reimbursement Obligations in accordance with the Debtors' prepetition practices; *provided*, *however*, that, during the Interim Period, the Debtor shall not pay any individual Employee on account of prepetition Wage Obligations and Employee Reimbursement Obligations in an amount greater than \$11,725; *provided, further* that such payments shall not exceed \$1,050,000 in the aggregate.

3. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, to pay all outstanding obligations on account of Payroll Taxes, the Health and Welfare Plans, the Optional Enrollment Plans, and Union Dues in accordance with the Debtors' prepetition policies and practices.

4. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, to pay Independent Contractor Obligations in accordance with the Debtors' prepetition practices, as necessary or appropriate, and in the exercise of their business judgment to assure the continuation of critical services from Independent Contractors; *provided, however*, that, the Debtors shall not make payments on account of prepetition Independent Contractor Obligation in excess of \$240,000.

³ The DIP Credit Agreement shall mean that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, by and among Cargo 360, CIBC, and various financial institutions and other persons from time to time parties thereto, dated as of September 28, 2012.

5. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, to continue to honor their Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Health and Welfare Plans, Optional Enrollment Plans, and Union Dues in the ordinary course of business and in accordance with the Debtors' prepetition practices and policies during the Interim Period.

6. The Banks are authorized and directed to receive, process, honor and pay any (a) any prepetition checks or electronic fund transfer requests from the Debtors' accounts with respect to (i) Wage Obligations and Employee Reimbursement Obligations that do not exceed the Prepetition Wage Cap per individual Employee and (ii) Payroll Taxes, Health and Welfare Plans, or Optional Enrollment Plans, and (iii) Independent Contractor Obligations in amount not to exceed \$240,000; and (b) any postpetition checks or new fund transfer requests from the Debtors' accounts with respect to such obligations. Banks and any third party receiving payment from the Debtors are authorized and directed to rely on the representations of the Debtors as to which payments are authorized by this Interim Order.

7. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim, or (c) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise any payment made pursuant to this Interim Order is not intended and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

8. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

9. The requirements of Bankruptcy Rule 6004(a) are waived.

10. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all steps necessary to carry out this Order.

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

13. A final hearing to consider the relief requested in the Motion shall be held on _____, at _____ (Eastern Time) and any objections or responses to the Motion shall be filed on or before seven (7) days before the final hearing date set forth herein and served on the parties as required by Local Rule 9006-1(c)(ii).

Dated: _____, 2012
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit B
Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

-----X
: **Chapter 11**
: **Case No. 12-12690 ()**
: **Jointly Administered**
: **Re: Docket Nos. ____**
-----X

In re
**SOUTHERN AIR
HOLDINGS, INC., et al.,
Debtors.**⁶

**FINAL ORDER (I) AUTHORIZING THE PAYMENT
OF CERTAIN EMPLOYEE OBLIGATIONS AND (II) AUTHORIZING AND
DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS PURSUANT
TO SECTIONS 105(a), 363(b), AND 507(a) OF THE BANKRUPTCY CODE**

Upon the motion, dated September 28, 2012 (the “Motion”),⁷ of Southern Air Holdings, Inc. and its affiliated debtors, as debtors and debtors in possession (collectively, the “Debtors”), requesting entry of (a) an Interim Order authorizing the Debtors to (i) pay outstanding prepetition Wage Obligations and Employee Reimbursement Obligations, subject to the Prepetition Wage Cap, (ii) pay all prepetition amounts due on account of Payroll Taxes, the Health and Welfare Plans, the Optional Enrollment Plans, and Union Dues, (iii) pay prepetition claims of Independent Contractors, and (iv) continue to honor their Wage Obligations, Employee Reimbursement Obligations, Payroll Taxes, Health and Welfare Plans, Optional Enrollment Plans, Union Dues, and payment of any fee or cost associated with the foregoing in the ordinary

⁶ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: (i) Southern Air Holdings, Inc., 6605; (ii) Cargo 360, Inc., 4233; (iii) Southern Air Inc., 2187; (iv) Air Mobility Inc., 3824; (v) 21110 LLC, 3761; (vi) 21111 LLC, 8100; (vii) 21221 LLC, 1567; (viii) 21550 LLC, 8103; (ix) 21576 LLC, 6341; (x) 21590 LLC, 8105; (xi) 21787 LLC, 0617; (xii) 21832 LLC, 7893; (xiii) 23138 LLC, 7192; (xiv) 24067 LLC, 6360; (xv) 46914 LLC, 0322; (xvi) Aircraft 21255, LLC, 5500; (xvii) Aircraft 21380, LLC, 1753; and (xviii) CF6-50, LLC, 9733. The address for all Debtors is 117 Glover Avenue, Norwalk, Connecticut 06850.

⁷ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

course of business during the Interim Period; (b) a Final Order authorizing the Debtors to (i) pay outstanding prepetition Wage Obligations and Employee Reimbursement Obligations, (ii) honor prepetition Severance Obligations, (iii) continue prepetition practices with respect to payment of postpetition Severance Obligations, and (iv) compensate eligible Employees for accrued and unused vacation days; and (c) an Interim Order and Final Order authorizing and directing Banks to receive, process, honor, and pay any check or electronic fund transfer from Debtors' accounts, to the extent that such checks or transfers relate to any of the obligations described herein, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, as more fully set forth in the Motion; and upon consideration of the *Declaration of Daniel J. McHugh in Support of the Debtors' Chapter 11 Petitions and First Day Relief*; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the Motion and the requested relief 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 Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having entered an interim order granting the relief requested in the Motion on September ____, 2012 (the "Interim Order"); 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 relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement,⁸ pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, to pay any outstanding prepetition Wage Obligations and Employee Reimbursement Obligations to their Employees in accordance with the Debtors' prepetition policies and practices; *provided, however*, that, such payments shall not exceed \$7,700 (in addition to amount authorized under the Interim Order).
3. The Debtors are further authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, to honor prepetition Severance Obligations in accordance with the Debtors' prepetition policies and practices; *provided, however*, that the Debtors shall not pay any individual Employee on account of prepetition Severance Obligations in an amount greater than the Prepetition Wage Cap.
4. The Debtors are further authorized, but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code to continue their prepetition practices with respect to payment of Severance Obligations during the pendency of these chapter 11 cases.
5. The Debtors are further authorized but not directed, to the extent consistent with the terms and conditions of the DIP Credit Agreement, pursuant to sections

⁸ The DIP Credit Agreement shall mean that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, by and among Cargo 360, CIBC, and various financial institutions and other persons from time to time parties thereto, dated as of September 28, 2012.

105(a), 363(b), and 507(a) of the Bankruptcy Code, to compensate eligible Employees for accrued and unused vacation days in accordance with the Debtors' prepetition practices.

6. The Banks are authorized and directed to receive, process, honor and pay any (a) any prepetition checks or electronic fund transfer requests from the Debtors' accounts with respect to Wage Obligations, Employee Reimbursement Obligations, or Severance Obligations and (b) any postpetition checks or new fund transfer requests from the Debtors' accounts with respect to such obligations. Banks and any third party receiving payment from the Debtors are authorized and directed to rely on the representations of the Debtors as to which payments are authorized by this Final Order.

7. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim, or (c) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise any payment made pursuant to this Final Order is not intended and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

8. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

9. The requirements of Bankruptcy Rule 6004(a) are waived.

10. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all steps necessary to carry out this Final Order.

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

Dated: _____, 2012
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE