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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21- _____ (____)

**DEBTOR’S MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING, BUT
NOT DIRECTING, THE DEBTOR TO PAY CERTAIN PREPETITION CLAIMS OF
CRITICAL VENDORS AND FOREIGN VENDORS AND (B) AUTHORIZING AND
DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED
CHECKS AND TRANSFERS**

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

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



Declaration”), which was filed with the Court on the Petition Date (as defined herein). In further support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

3. The bases for the relief requested herein are sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Bankruptcy Rules 6003 and 6004.

Background

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

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

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

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

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

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

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

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

Relief Requested

11. By this Motion, the Debtor seeks entry of the Proposed Orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, (a) authorizing, but not directing, the Debtor to pay, in its sole discretion, all or a portion of the prepetition obligations of certain Critical Vendors (as defined below) and Foreign Vendors (as defined below), (b) authorizing banks and other financial institutions to receive, process, honor and pay checks and

transfers issued in relation to the foregoing and to rely on the representations of the Debtor as to which checks and transfers are authorized to be paid in accordance with this Motion, and (c) granting such other relief as is just and proper.

12. If the requested relief is not granted and certain necessary trade and other vendors refuse to continue to supply goods and/or services to the Debtor postpetition, the Debtor may well be unable to properly maintain its fleet, fuel its planes, or fly certain routes that would undermine and interfere with the restructuring that already has the support of most of the Debtor's aircraft creditors.

13. By seeking the authorization requested herein, it should not be presumed that the Debtor has determined, as of this time, which of the Critical Vendors or Foreign Vendors they will pay or honor, nor should any party rely on this Motion as to any specific claim or benefit.

Facts Relevant to this Motion

A. Operational Overview

14. Collectively, the Debtor's Critical Vendors and Foreign Vendors (each as defined below) ensure that the Debtor receives the goods and services necessary to operate its international airline operations. Although the Debtor has significantly reduced its currently scheduled passenger network in response to the global pandemic, it continues to operate its cargo business and select international flights, and has started to resume domestic services in the Philippines. The Debtor has actually expanded its cargo services during the pandemic, which continue to provide a critical source of revenue, to deliver essential goods and equipment to its customers and stakeholders in need. Although the Debtor has proactively sought deferrals of amounts owed to its vendors since the onset of COVID-19, contributing in large part to the size of the prepetition balances, the Debtor seeks authority to fulfill these obligations because any significant interruption in the Debtor's vendor network could result in the cessation of the

Debtor's airline services, which in turn would have a disastrous impact on the Debtor's business operations and potentially restrict its readiness to meaningfully restart operations once the COVID-19 pandemic abates.

B. The Debtor's Critical Vendors

15. The successful operation of the Debtor's business requires them to purchase goods and services from select third-party vendors and independent contractors around the world, without which the Debtor could not continue to operate its business or would result in operating at significantly reduced profitability (collectively, the "**Critical Vendors**" and, the claims of Critical Vendors, the "**Critical Vendor Claims**"). Each of the Critical Vendors provides critical and necessary services to the Debtor (collectively, the "**Critical Goods and Services**"). The Debtor has reviewed its business relationships and identified the Critical Vendors that, in the Debtor's sound business judgment, are so essential that the loss of these particular goods or services would cause immediate and irreparable harm to the Debtor's business, market share, and preparedness to continue resuming large-scale operations. In doing so, the Debtor considered a number of factors (the "**Critical Vendor Factors**"), including (a) which suppliers were sole-source or limited-source suppliers, without which the Debtor could not continue to operate without disruption, (b) which suppliers would be prohibitively expensive to replace, (c) which suppliers would present an unacceptable risk to the Debtor's operations should they cease the provision of truly essential services or supplies, and (d) the extent to which suppliers may be able to obtain or have obtained trade liens on assets of the Debtor or administrative expense claims pursuant to section 503(b)(9) of the Bankruptcy Code.² It is

² As part of this analysis, the Debtor also has considered whether certain vendors provide critical services to non-debtor affiliates and where, absent timely payment of prepetition amounts due and owing by the Debtor, such providers may refuse to provide further services to both the Debtor and its non-debtor affiliates.

therefore essential to the reorganization efforts that the Debtor be allowed to pay certain of the Critical Vendor Claims.

16. The Debtor is mindful of its fiduciary obligations to preserve and maximize the value of its estate. The preservation of key business relationships is among management's primary goals as the Debtor transitions into chapter 11. The Debtor's ability to continue its business operations in the ordinary course is key to meeting those goals.

17. The categories of Critical Goods and Services provided by the Critical Vendors include:³

- (i) Aircraft parts suppliers and maintenance services providers: The Debtor relies on aircraft part suppliers to adequately equip its aircraft with top of the line equipment in order to assure customer safety. Additionally, the Debtor relies on aircraft service providers, such as mechanics and inspectors, to upgrade, maintain, and repair its aircraft as needed. These service providers, which must stay current with government regulations, provide essential services to the Debtor, including, among others, aircraft and engine upgrades; repairs and general maintenance; engine data management; assisting in regularly updating company policies, procedures, and aircraft and engine manuals; and repair and maintenance of tools and equipment used for aircraft maintenance. The Debtor's aircraft parts and service suppliers are essential because they are frequently less expensive than their competitors, they have been developed to serve the Debtor's particular needs, they have been fully approved, and they have proven their reliability.
- (ii) Safety and security services providers: This category includes providers of an uninterrupted supply of safety, environment, and security products relating to the handling of flights, baggage, hazardous materials, and dangerous goods; facility security systems and access restrictions; fire safety systems; security related to catering services; aircraft security at domestic and international stations; implementation of standard and additional security measures at airport and related facilities (including aircraft parking areas and corporate offices); procurement, maintenance, and repair of closed-circuit video monitoring systems; procurement, maintenance, repair, and replenishment of security screening equipment;

³ The Debtor notes that certain of the below expenses may also be addressed in other first day motions, like wages for independent contractors or airport fees. The Debtor includes these categories in this Motion out of an abundance of caution.

security training and background checks for employees; environmental compliance suppliers (such as solid waste haulers); and other regulatory management services. These highly in-demand products, services, and personnel are limited to those that have received a security clearance following lengthy background checks; as a result, if the Debtor is suddenly forced to change such vendors, a qualified replacement would take time to locate and the Debtor might have to suspend or reduce operations at certain airports until the services were restored or replaced. Such a reduction in operations would cause the Debtor to lose revenue and likely lose valuable market share, making it imperative to maintain such vendors.

- (iii) Customer amenity providers and other related “customer-facing” services: These providers supply food, beverages, in-flight audio, video entertainment, and other amenities (such as blankets, towels, seat covers, personal kits, and related services or products). This category also includes advertising and media services. The Debtor has built a solid reputation by offering high quality amenities that its passengers have come to expect, and a drop-off in the supply or quality of these “customer-facing” products would damage business and result in a loss of customer confidence.
- (iv) Customer handling, fuel service providers and other essential ground support services: These goods and services include baggage sorting services, ground equipment servicing and maintenance, ground support, and de-icing services. Any loss of replacement parts or system support would result in less automation and an increase in operating costs. Further, the Debtor’s significant ground operations require a large fleet of motor vehicles and specialized ground equipment that require gasoline, diesel fuel, lubricants, and other products, and the loss of one or more suppliers of such products would result in substantial down-time for airport operations, thereby causing serial flight delays and cancellations. The Debtor also purchases jet fuel from a variety of fuel suppliers, and a delay in payments may result in the suppliers’ refusal to provide fuel for the Debtor’s fleet, which would almost certainly result in delays or flight cancellations and a resulting loss of revenue.
- (v) Crew and employee-related services providers: As a labor-intensive business, the Debtor requires significant infrastructure to support its large workforce. The Debtor’s payroll system (both local and foreign), work rules (including those arising under union contracts), and other employee assessment tools have been painstakingly integrated into industry-specific systems over a matter of years. Other employee-related services include regulatory training services (such as pilot proficiency and simulator trainings), crew lodging providers, PPE providers, ground transport services, and healthcare and medical service providers (whose services are required under certain laws and union contracts). If any of these service

providers, who are not employed by the Debtor, refused to supply the necessary parts, to maintain and repair their products, or to support their software, the Debtor would be required to purchase and implement entirely new systems or programs at exorbitant cost and with long lead times, which could, potentially, severely disrupt the Debtor's operations.

- (vi) Information technology (IT) suppliers, call centers, and service providers: The Debtor's business requires a vast and complex constellation of management and information systems and services that must be able to communicate effectively with each other. This includes, among others, IT suppliers for reservations, ticketing, payment, departure control, weight and balance management, online bookings, mobile apps, the corporate website, frequent flyer management, revenue management, network planning, passenger complaint handling, surveys, security reporting database systems, technology used for flight operations, baggage systems, cargo operations, crew management, air-to-ground systems, aircraft maintenance management, ground equipment maintenance, fuel management, crisis management system, quality assurance tool, operations control, financial and treasury applications, payroll and timekeeping systems, human resource systems, revenue accounting, data warehousing, office productivity and analytics tools, technology used for digital marketing, information security tools, enterprise storage, and database and server maintenance. Without steady access to and constant processing of certain information, such as the amount of fuel or weight on each plane, the Debtor would be unable to fly. Further, even if the Debtor could replace such suppliers, replacement would take substantial time and therefore likely come at great cost to the Debtor's business.
- (vii) Flight navigation systems providers: In the regular course of the Debtor's business, the Debtor uses various systems, services, and products central to flight operations, including radio services and flight charts. Each of the providers of these services and products is, by and large, a monopoly vendor for that service or product. As aircraft communications and up-to-date flight charts are indispensable components of flight operations, the Debtor needs assurance that the flow of such services and products will be unaffected by the filing of its bankruptcy petition, especially as the Debtor prepares to resume more normalized operations. Alternatives to such flight navigation services and products are unavailable.
- (viii) Warehousing service providers: Certain shippers and warehousemen currently possess goods that are vital to the Debtor's operations, and to the extent the Debtor has not paid for such services, the shippers and warehousemen may be able, pursuant to state law, to assert liens on the goods in their possession to secure the charges and expenses incurred in connection with the transportation, storage, or preservation of the Debtor's goods and merchandise. Therefore, it is essential to its reorganization

efforts that the Debtor is permitted to pay selected counterparties in order to continue its business without significant disruption.

- (ix) Common carriers, expeditors, transportation service providers, and other related parties. The Debtor's operations rely on domestic and foreign commercial common carriers, road feeder services, movers, terminal transfer services, shippers, freight forwarders/consolidators, delivery services, customs brokers, and certain other third-party service providers to ship, transport, store, move through customs, and deliver goods through established national and international distribution networks. Such services are critical to the smooth operation of the Debtor's international business.
- (x) Other necessary and related services. The Debtor's operations further rely on other necessary and related services and suppliers such as manpower services to handle facilities and equipment maintenance and repairs, shuttle drivers, and janitorial services. The Debtor also uses essential printing services for various materials, many of which are related to regulatory requirements and considered "no-go items," such as cargo labels, security stickers, baggage tags, boarding passes, and safety cards, among others.

18. While the Debtor hopes and expects to be able to assure a continuing postpetition supply of goods and services through consensual negotiation with the vendors in the categories above, the Debtor recognizes that its fiduciary duties require it to consider and plan for the many vendors that may refuse to provide future goods or services unless their prepetition claims are paid. The Critical Vendors are so essential to the Debtor's business that the lack of each of their particular services, even for a short duration, would likely disrupt the Debtor's operations and cause irreparable harm to the Debtor's business, goodwill, employee morale, customer base, and market share. This irreparable harm to the Debtor and to the recovery of its creditors will far outweigh the cost of payment of the prepetition claims of the Critical Vendors. Therefore, the Debtor seeks the authority, but not the direction, to satisfy prepetition obligations to select Critical Vendors as more fully set forth herein.

C. Foreign Vendors

19. In addition to the Critical Vendors that provide necessary goods and services to the Debtor around the world, the Debtor also incurs obligations to numerous foreign vendors, service providers, independent contractors, and landlords (collectively, the “**Foreign Vendors**”) in each of the 17 countries in which they operate outside of the United States, as described more fully in the First Day Declaration. In certain of these jurisdictions, vendors have few to no contacts in the United States or may not be familiar with the U.S. Bankruptcy Code. Foreign Vendors may not be willing to transact with a company owing outstanding debts after filing for any type of bankruptcy proceeding, local or international. Additionally, despite the extraterritorial effect of the automatic stay, it is possible (if not likely) that certain Foreign Vendors could seek to withhold goods or services, materially alter the terms on which they agree to provide goods or services, or otherwise interfere with ordinary course operations of the Debtor’s business.

20. Accordingly, it is critical that the Debtor obtain Court authority to secure the benefit of the goods and services provided by such Foreign Vendors. In particular, the goods and services provided by Foreign Vendors provide the Debtor, among other things, localized operational overhead costs, foreign country-specific service providers, and other day-to-day operational support (the invoices for these services being the “**Foreign Vendor Claims**,” and collectively with the Critical Vendor Claims, the “**Vendor Claims**”). In many cases, these Foreign Vendors provide essential services for the entire global operation and view their relationship with the Airline as a single relationship, and would not distinguish between the Debtor and non-debtor entities given their foreign footprint.

21. The Debtor believes that many of the Foreign Vendors have limited or no contacts with the United States. Thus, notwithstanding the extraterritorial effect of Bankruptcy Code, if

one of the Debtor's planes is detained or a contractual agreement is breached, the Court's ability to enforce bankruptcy law will be contingent on (a) the Court's jurisdiction over the creditor (e.g., the creditor, while acting overseas, has operations or assets in the United States) or (b) a foreign court's willingness to enforce United States bankruptcy law if enforcement of the automatic stay is sought in a foreign jurisdiction. Being that most of the Foreign Vendors lack minimum contacts with the United States, the Debtor and the Court may be unable to prevent those Foreign Vendors from acting in contravention of and/or violating the automatic stay by pursuing remedies against the Debtor's property located outside the United States.

22. In the meantime, the Debtor's operations could be delayed, possibly resulting in breach of contract by the Debtor with other counterparties and customers, impairment of the Debtor's relationships with passengers and foreign governments, and loss of revenues derived from its business operations, including the Debtor's ongoing cargo operations, which continue to provide a critical source of revenue and for delivery of essential goods and supplies during the COVID-19 pandemic. Additionally, like certain of the Critical Vendors, some Foreign Vendors provide services to the Debtor's non-debtor affiliates and could terminate service to those non-debtors if outstanding prepetition debts are not timely satisfied, which, given the integrated nature of the Airline's global operations, could materially impair the Debtor's operations. Thus, the value of the Debtor's estate and the prospects of a successful reorganization would be significantly impaired because of the considerable risk that the Foreign Vendors will not respect the automatic stay or orders of this Court.

23. The Debtor's foreign operations are essential to the maintenance of the Debtor's worldwide airline business. The global nature of the Debtor's business is a key source of revenues and a central component of the overall reputation of the Debtor's airline and the loyalty

of its customers. If the value of the Debtor's assets is to be preserved, the Debtor must be authorized to continue the usual funding and maintenance of its international operations. Failure to fund these operations will severely disrupt the Debtor's flight schedules and adversely impact the goodwill attributed to its business by the flying public. Additionally, without the protection of the automatic stay afforded by section 362 of the Bankruptcy Code, the non-payment of claims owed to Foreign Vendors will place the Debtor at risk of asset seizures, lien filings and other self-help remedies that may be available to Foreign Vendors under the laws of their respective jurisdictions. The Foreign Vendors may also decline to provide goods and services, or to allow access to foreign airports, unless their prepetition claims are paid in full. Such actions by Foreign Vendors may well create operational chaos and possibly strand the Debtor's customers or its cargo goods overseas. Such operational turmoil could severely undermine the Debtor's efforts to reassure to its foreign, as well as domestic customers, that chapter 11 is not tantamount to liquidation. Without the goods, services, and rights provided by the Foreign Vendors, the Debtor will incur significant costs and potentially devastating disruptions in connection with its efforts to sustain international operations, potentially interfering with the Debtor's successful reorganization.

D. Payment of Critical Vendor Claims and Foreign Vendor Claims

24. Before taking account of the impact of temporary suspensions during the global pandemic, the Debtor provided international flight service to 18 countries around the world, including the United States. In 2019, the last full year prior to the pandemic, the Debtor's revenues from international operations constituted approximately 78% of the Debtor's total revenues. The Debtor's international operations are critical elements of the overall success of the Debtor's business.

25. Based on its books and records, the Debtor estimates that, as of the Petition Date, it owes approximately \$183 million relating to outstanding prepetition Critical Vendor Claims and Foreign Vendor Claims. As discussed more fully in the First Day Declaration, the size of this amount is due in part to the Debtor's prepetition successful efforts to defer prepetition payments, or extend then-existing payment terms, in order to preserve liquidity and minimize cash expenditures in the months and weeks leading up to the Petition Date. Although these deferrals have led to an increase in the overall amount of prepetition debt relative to the Debtor's typical accounts payable balance, they were instrumental in providing the Debtor with the time and liquidity necessary to facilitate an orderly commencement of the Chapter 11 Case.

26. The Debtor requests authority to satisfy certain claims of Critical Vendors that it has identified in consultation with its professionals, based on the Critical Vendor Factors, rather than listing them in this Motion. Identifying all Critical Vendors now, by inquiring as to their willingness to continue provision of goods and services in the absence of payment of prepetition amounts owed to them, would substantially reduce the Debtor's negotiating leverage and potentially lead to a disruption in the Debtor's business and greater reduction in estate assets.

27. By this Motion, the Debtor seeks authority, but not direction, to pay up to \$35 million (or the foreign currency equivalent thereof) to Critical Vendors and Foreign Vendors on account of prepetition claims on an interim basis (the "**Interim Vendor Cap**"), before entry of a Final Order, and up to a maximum aggregate amount of \$73 million to Critical Vendors and Foreign Vendors on account of prepetition claims on a final basis (the "**Final Vendor Cap**" and, together with the Interim Vendor Cap, the "**Vendor Caps**"), subject to the qualifications below. Such payments will be made in the ordinary course as they come due and over time based upon negotiations with each Critical Vendor or Foreign Vendor and the Debtor's available cash flow.

The Debtor will use reasonable efforts where appropriate to condition payments to Critical Vendors and Foreign Vendors, as is practical, upon such vendor's agreement to continue to supply goods and services to the Debtor throughout the Chapter 11 Case on the normal and customary trade terms, practices, and programs in effect between the Debtor and the Critical Vendors and Foreign Vendors (the "**Customary Trade Terms**") prior to the Petition Date and, in the case of Foreign Vendors, upon consent to the jurisdiction of this Court.

28. The Debtor's proposed Vendor Caps are within the range of amounts awarded by courts in other cases in this District, and well within reason given the size of PAL's global operations, which last year saw more than \$1.5 billion in gross revenue, despite the onset of the COVID-19 global pandemic.⁴ *See, e.g., In re Grupo Aeromexico, S.A.B. de C.V.*, No. 20-11563 (SCC) (Bankr. S.D.N.Y. Aug. 20, 2020) [ECF No. 309] (authorizing payment of prepetition claims of critical vendors and foreign vendors in an aggregate amount not to exceed \$77.6 million); *In re LATAM Airlines Group S.A.*, No. 20-11254 (JLG) (Bankr. S.D.N.Y. July 7, 2020) [ECF No. 464] (authorizing payment of critical vendor and foreign vendor claims not to exceed \$175 million); *In re Sears Holdings Corp.*, No. 18-23538 (RDD) (Bankr. S.D.N.Y. Nov. 16, 2018) [ECF No. 793] (authorizing payment of critical vendor and foreign vendor claims not to exceed \$90 million); *In re AMR Corp.*, No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011) [ECF No. 425] (authorizing payment of approximately \$355 million of prepetition foreign creditor obligations); *In re AMR Corp.*, No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 23, 2011) [ECF No. 451] (authorizing payment of up to \$85 million of prepetition critical vendor claims).⁵

⁴ As noted earlier, in the last full year prior to the global pandemic, the Debtor's revenue exceed \$3 billion.

⁵ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtor's proposed counsel.

E. Debtor's Proposed Procedures Related to Payment of Critical Vendor Claims and Foreign Vendor Claims

29. To ensure that Critical Vendors and Foreign Vendors transact business with the Debtor on Customary Trade Terms, the Debtor proposes the following procedures, to be implemented in the Debtor's sole discretion, as a condition to paying any Vendor Claims: (a) that a letter or contract requiring the Critical Vendor or Foreign Vendor to provide goods and services during the Chapter 11 Case in accordance with Customary Trade Terms (a "**Vendor Agreement**") be delivered to, and executed by, such Critical Vendor or Foreign Vendor, along with a copy of the order granting the relief sought herein, and (b) that payment of Vendor Claims include a communication of the following statement:

By accepting this payment, the payee agrees to the terms of the Order of the U.S. Bankruptcy Court for the Southern District of New York, [dated [●], 2021] in the chapter 11 case of Philippine Airlines, Inc., (Case No. 21-----()), entitled "[Interim][Final] Order Authorizing (A) Payment of Certain Prepetition Claims of Critical Vendors and Foreign Vendors and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers" and submits to the jurisdiction of that Court for enforcement thereof.

30. As a further condition of receiving payment on a Vendor Claim, the Debtor proposes that it be authorized, in its sole discretion, to require that a Critical Vendor or a Foreign Vendor agree to take whatever action is necessary to remove any existing trade liens at such Critical Vendor's or Foreign Vendor's sole cost and expense and waive any right to assert a trade lien on account of the paid Vendor Claim.

31. The Debtor shall maintain a matrix summarizing (a) the name of each Critical Vendor and Foreign Vendor paid on account of Vendor Claims, (b) the amount paid to each Critical Vendor and Foreign Vendor on account of its Vendor Claim, and (c) the goods or services provided by such Critical Vendor and Foreign Vendor. This matrix will be provided (x) biweekly, until a final order granting the relief requested herein is entered, and (y) monthly

thereafter, in each case to the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) and the retained professionals of any official committee of unsecured creditors (the “**Committee**”) appointed in the Chapter 11 Case, which Committee professionals shall keep the matrix confidential on a professionals-only basis and shall not disclose any of the information in the matrix to anyone, including any member of the Committee, without prior written consent from the Debtor or further order of this Court.

32. The Debtor believes that payment of some or all Vendor Claims owed to Critical Vendors and Foreign Vendors will be necessary to preserve operations and successfully reorganize. The need for the flexibility to pay such claims is particularly acute in the period immediately following the Petition Date.

Request for Authority to Pay Claims Under Section 503(b)(9)

33. Under section 503(b)(9) of the Bankruptcy Code, Vendor Claims for the value of goods received by the Debtor in the ordinary course of its business during the 20-day period prior to the Petition Date are entitled to administrative claim status (the “**Twenty-Day Administrative Claims**”). As administrative claims incurred in the ordinary course of the Debtor’s business, the Debtor believes that it is authorized to pay the Twenty-Day Administrative Claims of Critical Vendors and Foreign Vendors pursuant to section 363(c)(1) of the Bankruptcy Code; however, the Debtor also believes that it is not required to reconcile or pay the Twenty-Day Administrative Claims prior to the conclusion of this case. Accordingly, for the avoidance of doubt, the Debtor requests that the Court enter an order clarifying that the Debtor is authorized, in its sole discretion, but not required, to pay the Twenty-Day Administrative Claims, or any portion thereof, of any Critical Vendor and any Foreign Vendor in the ordinary course of the Debtor’s business and on such terms and conditions as the Debtor deems appropriate. The

Debtor requests that all payments made to Critical Vendors and Foreign Vendors be applied first in satisfaction of such Critical Vendor's Twenty-Day Administrative Claims, if any.

Honoring Prepetition Checks and Electric Transfers

34. To facilitate the payment of Critical Vendors and Foreign Vendors, the Debtor additionally respectfully requests that the banks that provide banking services to the Debtor be authorized and required to (a) honor any Checks drawn against its accounts, but not cleared prior to the Petition Date, and (b) complete any fund transfer requests made but not completed prior to the Petition Date. In addition, the Debtor respectfully requests authorization to issue new postpetition checks and to make postpetition fund transfer requests to replace any prepetition checks and prepetition transfers to Critical Vendors and Foreign Vendors that may be dishonored by the banks.

Basis for Relief

A. The Court May Authorize Payment of Critical Vendor Claims and Foreign Vendor Claims Pursuant to Section 105(a) of the Bankruptcy Code and the Doctrine of Necessity

35. The Court may authorize the Debtor to pay the prepetition Critical Vendor Claims and Foreign Vendors Claims pursuant to section 105 of the Bankruptcy Code and the "doctrine of necessity." Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). As one court recently noted, "a Bankruptcy Court [may] authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor. This is commonly referred to as either the 'doctrine of necessity' or the 'necessity of

payment' rule, which recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." *In re Windstream Holdings, Inc.*, 614 B.R. 441, 456-57 (S.D.N.Y. 2020) (internal citations omitted). *See also, In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) ("To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is 'critical to the debtor's reorganization.'") (quoting *In re Fin. News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) ("[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.").

36. This doctrine of necessity functions in a chapter 11 reorganization 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. *See In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor's continued operation). The doctrine is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. The court in *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), indicated its accord with the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately. The court stated that a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes

of the Code. *Id.* at 932. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11: “facilitating the continued operation and rehabilitation of the debtor” *In re Ionosphere Clubs*, 98 B.R. at 176. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

B. Payment of Prepetition Critical Vendor and Foreign Vendor Claims Is Authorized Under Section 363 of the Bankruptcy Code

37. The Court may authorize the Debtor to pay the prepetition Critical Vendor Claims and Foreign Vendor Claims pursuant to section 363 of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “A bankruptcy court may authorize payment of prepetition claims on a postpetition basis pursuant to Bankruptcy Code §§ 363(b) and 105(a).” *Windstream*, 614 B.R. at 456. A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *see also Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (standard for determining a section 363(b) motion is whether the debtor has a “good business reason” for the requested relief). In addition, section 363(c) allows a debtor in possession to enter into transactions involving property of the estate in the ordinary course of business without an order of the court. “The Bankruptcy Code is designed to allow a debtor-in-possession the flexibility to engage in ordinary transactions without unneeded oversight by creditors or the court, while at the same time giving

creditors an opportunity to contest those transactions that are not ordinary.” *In re Dana Corp.*, 358 B.R. 567, 580 (Bankr. S.D.N.Y. 2006). *See also In re James A. Phillips, Inc.*, 29 B.R. 391, 395 n.2 (S.D.N.Y. 1983) (“Insofar as transactions are actually in the ordinary course, they are authorized automatically by § 363(c)(1) and § 1107(a), and do not require Bankruptcy Court approval.”).

38. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Significantly, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this District have consistently and appropriately been reluctant to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board’s decisions as long as they are attributable to any “rational business purpose.” *In re Integrated Res. Inc.*, 147 B.R. at 656.

39. Further, sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. Indeed, a debtor in possession operating a business under section 1108 of the Bankruptcy Code has a duty to protect and preserve the value of its business, and prepetition claims may be paid if necessary to perform the debtor’s duty. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when

this duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”). The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* See also *Windstream*, 614 B.R. at 457 (“Ultimately, §§ 363(b) and 105(a), as well as the case law interpreting them, serve the purpose of imposing a ‘duty’ on the courts ‘to maintain the estate for the benefit of *all* creditors.’”) (emphasis in original).

C. Bankruptcy Courts in This District Routinely Grant Motions to Pay Prepetition Critical Vendor Claims and Foreign Vendor Claims Under Similar Circumstances and Should Do So in the Instant Case

40. Courts in this District have routinely authorized the payment of prepetition claims of critical vendors in complex reorganizations where such payment is: (a) in the best interest of the estate and its creditors; and (b) essential to maintaining the debtor’s operations. See, e.g., *In re Grupo Aeromexico, S.A.B. de C.V.*, No. 20-11563 (SCC) (Bankr. S.D.N.Y. Aug. 20, 2020) [ECF No. 309] (authorizing payment of prepetition critical vendor claims); *In re LATAM Airlines Group S.A.*, No. 20-11254 (JLG) (Bankr. S.D.N.Y. July 7, 2020) [ECF No. 464] (same); *In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. April 22, 2019) [ECF No. 377] (same); *In re Sears Holdings Corp.*, No. 18-23538 (RDD) (Bankr. S.D.N.Y. Nov. 16, 2018) [ECF No. 793] (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) [ECF No. 215] (same).

41. Courts in this District have similarly authorized payment to foreign vendors in complex reorganizations where such payment is: (a) in the best interest of the estate and its creditors; (b) essential to maintaining the debtor’s operations; and (c) imperative to preventing foreign vendors from taking action against the debtor in foreign countries. See, e.g., *In re Avianca Holdings, S.A.*, No. 20-1113 (MG) (Bankr. S.D.N.Y. Jan. 27, 2021) [ECF No. 1357]

(authorizing payment of prepetition foreign vendor claims); *In re Grupo Aeromexico, S.A.B. de C.V.*, No. 20-11563 (SCC) (Bankr. S.D.N.Y. Aug. 20, 2020) [ECF No. 309] (same); *In re LATAM Airlines Group S.A.*, No. 20-11254 (JLG) (Bankr. S.D.N.Y. July 7, 2020) [ECF No. 464] (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) [ECF No. 214] (same).

42. In the instant case, the Debtor firmly believes that the uninterrupted supply of goods and services provided by Critical Vendors and Foreign Vendors is imperative to its ongoing operations and viability, and to a successful reorganization. As the foregoing authority amply supports, where the ability to pay promptly prepetition claims of Critical Vendors and Foreign Vendors is necessary to prevent disruption to the Debtor's business operations, courts are fully empowered to authorize such payments. Further, the satisfaction of the Critical Vendor Claims and Foreign Vendor Claims will enable the Debtor to preserve its business operations and safeguard the confidence and goodwill of its suppliers and service providers, including to preserve the Debtor's ability to resume pre-COVID operations. Without the requested relief, which is sought based on the Debtor's sound business judgment, the interests of all creditors and the Debtor's reorganization efforts could be jeopardized. Therefore, the Debtor respectfully submits that the relief sought herein is fully justified by sections 105 and 363 of the Bankruptcy Code, as well as the "doctrine of necessity."

43. The relief sought herein, however, shall not be construed to limit, or in any way affect, the Debtor's ability to contest any invoice or other charge or claim of any Critical Vendor or Foreign Vendor on any grounds.

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

44. The Debtor has sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to its postpetition financing. In addition, under the Debtor's existing cash management system, the Debtor can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtor respectfully requests that the Court authorize and direct all applicable financial institutions, when requested by the Debtor, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Debtor Has Satisfied Bankruptcy Rule 6003(b)

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

46. As set forth above, the Debtor believes an immediate and orderly transition into chapter 11 is critical to the viability of its operations and that any delay in granting the relief requested could hinder the Debtor's operations and cause irreparable harm. The failure to

receive the requested relief during the first 21 days of the Chapter 11 Case could severely disrupt the Debtor's operations at this critical juncture and imperil the Debtor's restructuring as contemplated by the RSAs. Accordingly, the Debtor submits that the relief requested herein is necessary to avoid immediate and irreparable harm, and that Bankruptcy Rule 6003(b) is satisfied.

Reservation of Rights

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

the validity of any particular claim or a waiver of the Debtor's or any other party in interest's rights to subsequently dispute such claim.

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

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

Notice

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

approving it will also be made available on the Debtor's Case Information Website located at www.kccllc.net/PAL. In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

No Prior Request

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

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

Dated: September 3, 2021
New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ Jasmine Ball

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*Proposed Counsel to the Debtor and Debtor
in Possession*

Exhibit A

Proposed Interim Order

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-____ (____)

**INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO
PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND FOREIGN
VENDORS AND (B) AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of an interim order (this “**Order**”) and a final order authorizing, but not directing, the Debtor to pay in the ordinary course of business prepetition claims of critical vendors³ (the “**Critical Vendors**”) and foreign vendors (the “**Foreign Vendors**”), all as set forth more fully in the Motion; 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 M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties and no other or further notice need be

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

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

³ Certain parties may receive payment on account of their prepetition claims pursuant to other motions that have been or may be filed by the Debtor. To the extent that a party receives payment on account of its prepetition claims pursuant to an order approving such motions, this Order shall not apply to such prepetition claims.

provided; and the Court having reviewed the Motion and held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the First Day Declaration and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that immediate relief is necessary to avoid irreparable harm to the Debtor and its estate as contemplated by Bankruptcy Rule 6003(b) and is in the best interests of the Debtor, its estate, its creditors, and all parties in interest; 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 relief requested in the Motion is hereby granted on an interim basis as set forth herein.

2. Pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code, the Debtor is authorized, but not directed, in the reasonable exercise of its business judgment, to pay some or all of the prepetition claims of the Critical Vendors and Foreign Vendors (the “**Vendor Claims**”) in an aggregate amount not to exceed \$35 million prior to the Final Hearing on the Motion (the “**Interim Vendor Cap**”); *provided* that prior to entry of an order granting the relief requested in the Motion on a final basis, the Debtor will not pay any Vendor Claim (a) prior to the applicable due date (or otherwise accelerate any payments) or (b) in excess of the Interim Vendor Cap.

3. The Debtor is authorized, but not directed, in its sole discretion, to condition payment of any Vendor Claims upon agreement by the Critical Vendor or Foreign Vendor to continue to supply goods or services to the Debtor on such Critical Vendor’s or Foreign Vendor’s Customary Trade Terms (as defined below) for a period following the date of the

agreement or on other such terms and conditions as are acceptable to the Debtor, including, in the case of Foreign Vendors, consent to the jurisdiction of this Court. As used herein, “**Customary Trade Terms**” means, with respect to a Critical Vendor or Foreign Vendor, (a) the normal and customary trade terms, practices, and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, and availability, and other applicable terms and programs), that were most favorable to the Debtor and in effect between such Critical Vendor or Foreign Vendor and the Debtor prior to the Petition Date or (b) such other trade terms as agreed by the Debtor and such Critical Vendor or Foreign Vendor.

4. As a further condition of receiving payment on a Vendor Claim, the Debtor is authorized, but not directed, in its sole discretion, to require that such Critical Vendor or Foreign Vendor agree to take whatever action is necessary to remove any existing trade liens at such Critical Vendor’s or Foreign Vendor’s sole cost and expense and waive any right to assert a trade lien on account of the paid Vendor Claim.

5. After the date hereof, the Debtor shall determine, in the ordinary course of business, which entities are Critical Vendors and Foreign Vendors by considering, among other things, (a) which suppliers are sole-source or limited-source suppliers, without which the Debtor could not continue to operate without disruption, (b) which suppliers would be prohibitively expensive to replace, (c) which suppliers present an unacceptable risk should they cease the provision of truly essential services or supplies, (d) the extent to which suppliers may be able to obtain or have obtained trade liens on assets of the Debtor or administrative expense claims pursuant to section 503(b)(9) of the Bankruptcy Code, and (e) the extent to which suppliers are beyond the jurisdiction of this Court and can thus, notwithstanding the automatic stay, exercise remedies that would disrupt the Debtor’s operations and business.

6. The Debtor shall maintain a matrix summarizing (a) the name of each Critical Vendor and Foreign Vendor paid on account of Vendor Claims, (b) the amount paid to each Critical Vendor and Foreign Vendor on account of its Vendor Claim, and (c) the goods or services provided by such Critical Vendor and Foreign Vendor. This matrix will be provided (x) biweekly until a final order granting the relief requested herein is entered and (y) monthly thereafter to the U.S. Trustee and the retained professionals of any Committee, which Committee professionals shall keep the matrix confidential on a professionals-only basis and shall not disclose any of the information in the matrix to anyone, including any member of the Committee, without prior written consent from the Debtor or further order of this Court.

7. The Debtor is authorized, but not directed, in its sole discretion, to require Critical Vendors and Foreign Vendors to enter into a Vendor Agreement when the Debtor determines that it is appropriate to do so in connection with making payments to Critical Vendors and Foreign Vendors.

8. If the Debtor, in its sole discretion, determines that a Critical Vendor or a Foreign Vendor has not complied with the terms and provisions of any Vendor Agreement or has failed to continue to provide Customary Trade Terms following the date of such agreement, or on such terms as were individually agreed to between the Debtor and such Critical Vendor or Foreign Vendor, the Debtor may terminate a Vendor Agreement, together with the other benefits to the Critical Vendor or Foreign Vendor as contained in this Order; *provided however*, that any such Vendor Agreement may be reinstated if (a) such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the Critical Vendor or Foreign Vendor, (b) the underlying default under the Vendor Agreement is fully cured by the Critical Vendor or Foreign Vendor not

later than five business days after the date the initial default occurred, or (c) the Debtor, in its sole discretion, reaches a subsequent agreement with the Critical Vendor or Foreign Vendor.

9. If a Vendor Agreement is terminated as set forth above, or if a Critical Vendor or Foreign Vendor that has received payment of a prepetition claim later refuses to continue to supply goods or services for the applicable period in compliance with the Vendor Agreement or this Order, then (a) the Debtor may, in its sole discretion, declare that the payment of the creditor's Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtor may recover in cash or in goods from such Critical Vendor or Foreign Vendor, (b) the creditor shall immediately return such payments in respect of a Vendor Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) the creditor's Vendor Claim shall be reinstated in such an amount so as to restore the Debtor and the Critical Vendor or Foreign Vendor to their original positions as if the Vendor Agreement had never been entered into and no payment of such Vendor Claim had been made.

10. All Vendor Agreements shall be deemed to have terminated, together with the other benefits to Critical Vendors and Foreign Vendors as contained in this Order, upon entry of an order converting the Debtor's Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

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

12. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or

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

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

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

15. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtor to dispute or contest the amount of or basis for any claims against the Debtor in connection with or relating to the Critical Vendors and Foreign Vendors or the goods and services provided thereby.

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

17. The requirements of Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

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

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

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

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

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

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

Dated: _____, 2021
New York, New York

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-____ (____)

**FINAL ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO PAY
CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND FOREIGN
VENDORS AND (B) AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of a final order (this “**Order**”) authorizing, but not directing, the Debtor to pay in the ordinary course of business prepetition claims of critical vendors³ (the “**Critical Vendors**”) and foreign vendors (the “**Foreign Vendors**”), all as set forth more fully in the Motion; 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 M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and no other or further notice need be provided; and the

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

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

³ Certain parties may receive payment on account of their prepetition claims pursuant to other motions that have been or may be filed by the Debtor. To the extent that a party receives payment on account of its prepetition claims pursuant to an order approving such motions, this Order shall not apply to such prepetition claims.

Court having reviewed the Motion and held a hearing to consider the relief requested in the Motion on a final basis (the “**Hearing**”); and upon the First Day Declaration and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that the relief granted herein is in the best interests of the Debtor, its estate, its creditors and all parties in interest; 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 relief requested in the Motion is hereby granted on a final basis as set forth herein.

2. Pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code, the Debtor is authorized, but not directed, in the reasonable exercise of its business judgment, to pay some or all of the prepetition claims of the Critical Vendors and Foreign Vendors (the “**Vendor Claims**”) in an aggregate amount not to exceed \$73 million (the “**Final Vendor Cap**”); *provided* that all payments to Critical Vendors and Foreign Vendors on account of Vendor Claims shall be applied first in satisfaction of such Critical Vendors and Foreign Vendors’ Twenty-Day Administrative Claims, if any; *provided further* that payments on account of Vendor Claims that are not Twenty-Day Administrative Claims shall not, in the aggregate, exceed the Final Vendor Cap.

3. The Debtor is authorized, but not directed, in its sole discretion, to condition payment of any Vendor Claims upon agreement by the Critical Vendor or Foreign Vendor to continue to supply goods or services to the Debtor on such Critical Vendor’s or Foreign Vendor’s Customary Trade Terms (as defined below) for a period following the date of the

agreement or on other such terms and conditions as are acceptable to the Debtor, including, in the case of Foreign Vendors, consent to the jurisdiction of this Court. As used herein, “**Customary Trade Terms**” means, with respect to a Critical Vendor or Foreign Vendor, (a) the normal and customary trade terms, practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, and availability, and other applicable terms and programs), that were most favorable to the Debtor and in effect between such Critical Vendor or Foreign Vendor and the Debtor prior to the Petition Date or (b) such other trade terms as agreed by the Debtor and such Critical Vendor or Foreign Vendor.

4. As a further condition of receiving payment on a Vendor Claim, the Debtor is authorized, but not directed, in its sole discretion, to require that such Critical Vendor or Foreign Vendor agree to take whatever action is necessary to remove any existing trade liens at such Critical Vendor’s or Foreign Vendor’s sole cost and expense and waive any right to assert a trade lien on account of the paid Vendor Claim.

5. After the date hereof, the Debtor shall determine, in the ordinary course of business, which entities are Critical Vendors and Foreign Vendors by considering, among other things, (a) which suppliers are sole-source or limited-source suppliers, without which the Debtor could not continue to operate without disruption, (b) which suppliers would be prohibitively expensive to replace, (c) which suppliers present an unacceptable risk should they cease the provision of truly essential services or supplies, (d) the extent to which suppliers may be able to obtain or have obtained trade liens on assets of the Debtor or administrative expense claims pursuant to section 503(b)(9) of the Bankruptcy Code, and (e) the extent to which suppliers are beyond the jurisdiction of this Court and can thus, notwithstanding the automatic stay, exercise remedies that would disrupt the Debtor’s operations and business.

6. The Debtor shall maintain a matrix summarizing (a) the name of each Critical Vendor and Foreign Vendor paid on account of Vendor Claims, (b) the amount paid to each Critical Vendor and Foreign Vendor on account of its Vendor Claim, and (c) the goods or services provided by such Critical Vendor and Foreign Vendor. This matrix will be provided (x) biweekly until a final order granting the relief requested herein is entered and (y) monthly thereafter to the U.S. Trustee and the retained professionals of any Committee, which Committee professionals shall keep the matrix confidential on a professionals-only basis and shall not disclose any of the information in the matrix to anyone, including any member of the Committee, without prior written consent from the Debtor or further order of this Court.

7. The Debtor is authorized, but not directed, in its sole discretion, to require Critical Vendors and Foreign Vendors to enter into a Vendor Agreement when the Debtor determines that it is appropriate to do so in connection with making payments to Critical Vendors and Foreign Vendors.

8. If the Debtor, in its sole discretion, determines that a Critical Vendor or a Foreign Vendor has not complied with the terms and provisions of the Vendor Agreement or has failed to continue to provide Customary Trade Terms following the date of such agreement, or on such terms as were individually agreed to between the Debtor and such Critical Vendor or Foreign Vendor, the Debtor may terminate a Vendor Agreement, together with the other benefits to the Critical Vendor or Foreign Vendor as contained in this Order; *provided however*, that any such Vendor Agreement may be reinstated if (a) such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the Critical Vendor or Foreign Vendor, (b) the underlying default under the Vendor Agreement is fully cured by the Critical Vendor or Foreign Vendor not

later than five business days after the date the initial default occurred, or (c) the Debtor, in its sole discretion, reaches a subsequent agreement with the Critical Vendor or Foreign Vendor.

9. If a Vendor Agreement is terminated as set forth above, or if a Critical Vendor or Foreign Vendor that has received payment of a prepetition claim later refuses to continue to supply goods or services for the applicable period in compliance with the Vendor Agreement or this Order, then (a) the Debtor may, in its sole discretion, declare that the payment of the creditor's Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtor may recover in cash or in goods from such Critical Vendor or Foreign Vendor, (b) the creditor shall immediately return such payments in respect of a Vendor Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever and (c) the creditor's Vendor Claim shall be reinstated in such an amount so as to restore the Debtor and the Critical Vendor or Foreign Vendor to their original positions as if the Vendor Agreement had never been entered into and no payment of such Vendor Claim had been made.

10. All Vendor Agreements shall be deemed to have terminated, together with the other benefits to Critical Vendors and Foreign Vendors as contained in this Order, upon entry of an order converting the Debtor's Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

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

12. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or

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

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

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

15. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtor to dispute or contest the amount of or basis for any claims against the Debtor in connection with or relating to the Critical Vendors and Foreign Vendors or the goods and services provided thereby.

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

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

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

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

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

Dated: _____, 2021
New York, New York

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE