UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re:	
VANTAGE TRAVEL SERVICE, INC.	Chapter 11
Debtor.	Case No. 23-11060-JEB

FINAL ORDER AUTHORIZING SECURED FINANCING PURSUANT TO 11 U.S.C. § 364(d) AND USE OF CASH COLLATERAL

Vantage Travel Service, Inc. (the "Debtor") having filed its *Motion for Interim and Final Orders Authorizing Secured Financing Pursuant to 11 U.S.C. § 364(d) and Use of Cash Collateral, and Related Relief* [Dkt. No. 7] (the "Financing Motion"); the Court on July 6, 2023 having entered its *Interim Order On Debtor's Motion for Interim and Final Orders Authorizing Secured Financing Pursuant to 11 U.S.C. § 364(d) and Use of Cash Collateral, and Related Relief* [Dkt. No. 57] (the "First Interim Order"), whereby the Court granted the interim relief sought by the Financing Motion for the reasons and to the extent set forth in the Interim Order; the Court having subsequently granted further relief on the Financing Motion and extended the Debtor's financing arrangements through September 15, 2023 pursuant to orders entered on July 26, 2023 [Dkt. No. 145] (the "Second Interim Order"), August 9, 2023 [Dkt. No. 226] (the "Third Interim Order"), August 15, 2023 [Dkt. No. 289] (the "Fourth Interim Order"), August 30, 2023 [Dkt. No. 333] (the "Fifth Interim Order"), and September 6, 2023 [Dkt. No. 348] (the "Sixth Interim Order", and, together with the First Interim Order, the Second Interim Order, the Third Interim Order, the Fourth Interim Order, and the Fifth Interim Order, the "Financing Order"); the Debtor having reported that it has repaid the principal and accrued interest on the "DIP Loans" that constituted

the post-petition financing authorized by the Financing Order (the post-petition lenders' associated legal fees remain subject to payment upon Court approval of same); the Debtor having filed its revised updated "Budget" for the period September 16, 2023 through November 18, 2023] [Dkt. No. 374] (the "Updated Budget") intended to cover the Debtor's administrative expenses associated with its pursuit of a liquidating Chapter 11 plan and related wind down matters; the Court having conducted a continued hearing on the Financing Motion on September 15, 2023; the Debtor, the Prepetition Lender and the Official Committee of Unsecured Creditors (the "Committee") having entered into that *Stipulation Concerning Use of Cash Collateral* dated September 15, 2023 and filed with the Court [Dkt. No. 376] (the "Stipulation"); upon consideration of the entire record of proceedings related to the Financing Motion and the Stipulation; and after due consideration and good and sufficient cause appearing therefor,

IT IS ORDERED THAT:

1. The Financing Motion is granted on a final basis in accordance with the terms and conditions of the Financing Order as modified by this Order. Capitalized terms used in the remaining provisions of this Order and not defined in this Order shall have the meanings ascribed to them in the Financing Order.

2. The Financing Order is deemed to be a final order with respect to (i) the DIP Loans that were made to the Debtor pursuant to the DIP Notes and the Financing Order and that have been repaid (save for the DIP Lenders' associated legal fees that remain subject to payment upon Court approval of same) and (ii) the Debtor's use of the Prepetition Lender's cash collateral ("Cash Collateral") pursuant to the Financing Order prior to the date of this Order.

3. The Debtor's authority to obtain DIP Loans from the DIP Lenders pursuant to the DIP Notes is terminated. There have been no Events of Default, and the Events of Default shall not apply to the Debtor's use of Cash Collateral.

4. The Stipulation is approved and the Debtor and the Committee are authorized to enter into and execute the Stipulation. Subject to the terms and conditions of the Stipulation and this Order, the Debtor is authorized to use Cash Collateral, including up to $1,186,506 of sale proceeds (including the $100,000 previously authorized pursuant to the Fourth Interim Order and the Sixth Interim Order) ("Cash Collateral"), through November 18, 2023 in accordance with the Stipulation, the Updated Budget and the remaining provisions of this Order.

5. As adequate protection for any diminution of the Prepetition Lender's interest in the Debtor's property in which the Prepetition Lender holds a valid, perfected, and enforceable prepetition lien or security interest (collectively, the "Prepetition Liens", and the Debtor's property subject to the Prepetition Liens, the "Prepetition Collateral"), including any proceeds derived from the sale or other disposition of the Prepetition Collateral, resulting from the use of Cash Collateral pursuant to this Order or otherwise, the Prepetition Lender shall receive:

a) Adequate Protection Liens. Continuing valid, binding, enforceable and perfected post-petition replacement liens pursuant to Sections 361, 363(e), and 364(d)(1) of the Bankruptcy Code on the Prepetition Collateral (as defined in Paragraph 6 below), which shall be *subject and subordinated to* the Carve-Out and which shall be *junior to and subordinate to* (i) the properly perfected purchase money security interests in the Prepetition Collateral (if any) ("PMSI"), and (ii) the Third-Party Cash Collateral Liens (as defined in attached Schedule A) but senior to the Prepetition Liens (the "Adequate Protection Liens"), and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Case (or any successor case involving the Debtor as debtor), and shall not be subject to Sections 510, 549 or 550 of the Bankruptcy Code. Notwithstanding the foregoing, any Adequate Protections Liens shall only be granted to the extent the Prepetition Liens are valid, perfected, and enforceable.

b) Adequate Protection Superpriority Claim. Administrative superpriority expense claims in the Chapter 11 Case (the "Adequate Protection Superpriority Claims"), *subordinate* in all respects and rights to the Carve-Out, but pursuant to Section 507(b), with priority over any and all other administrative expenses and unsecured claims against the Debtor, now existing or hereafter arising, of any kind or nature whatsoever to the extent provided by Sections

503(b) and 507(b) of the Bankruptcy Code. Notwithstanding the foregoing, any Adequate Protection Superpriority Claims shall only be granted to the extent the Prepetition Liens are valid, perfected, and enforceable.

c) Compliance with Approved Budget. The Debtor shall comply with, and shall use cash, including Cash Collateral, solely in accordance with the Updated Budget.

6. For avoidance of doubt, the term "Prepetition Collateral" shall mean and include (i) all assets constituting Prepetition Collateral that remain property of the Debtor's estate, (ii) the Cash Collateral, (iii) all other property of the Debtor's estate, including without limitation all proceeds of property that was part of the Debtor's estate as of the Petition Date and that has since been sold or otherwise disposed of, and (iv) the proceeds, products, rents, accession and profits of the foregoing; *provided, however,* that the Prepetition Collateral shall not include, and shall specifically exclude, (A) any proceeds or property recovered, unencumbered or otherwise, from all of the Debtor's claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and similar statutes or common law (collectively, "Avoidance Actions"); and (B) any commercial tort claims.

7. In light of the Prepetition Lender's agreement to permit the Debtor's use of Cash Collateral pursuant to the Financing Order and this Order, including without limitation the provisions of the Financing Order relating to the Carve-Out, the Debtor is deemed to have waived (a) the provisions of Section 506(c) of the Bankruptcy Code and (b) all rights and benefits of Section 552(b) of the Bankruptcy Code, including without limitation any right to assert that the "equities of the case" exception shall apply, and such waivers are approved and made binding on the Debtor's estate and all entities.

8. Subject to Paragraphs 5 and 7, nothing in this Order shall prejudice whatever rights the Official Committee of Unsecured Creditors appointed in the Debtor's Chapter 11 case (the

"Committee") may have (collectively, the "Committee Challenge Rights") to obtain entry of a Court order granting it standing to commence and prosecute a Challenge Proceeding (defined below):

> (a) to object to or challenge the validity, extent, perfection, or priority of the security interests and liens of the Prepetition Lender in and to the Prepetition Collateral, or the validity, perfection, allowability, priority, or amount of the Prepetition Debt (any such objection or challenge, a "Perfection Challenge"), or
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> (b) to bring suit against the Prepetition Lender in connection with or related to the Prepetition Debt, or the actions or inactions of the Prepetition Lender arising out of or related to the Prepetition Debt, including without limitation claims for equitable subordination or recharacterization of the Prepetition Debt;

provided, however, that, with respect to a Perfection Challenge only, the Committee, upon having first been granted requisite standing, must commence a contested matter or adversary proceeding, as applicable, raising such objection or challenge (each, a "Challenge Proceeding"), including, without limitation, any claim against the Prepetition Lender in the nature of a setoff, counterclaim, or defense to the Prepetition Debt (including but not limited to, those under Sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code or by way of suit against the Prepetition Lender), by **October 23, 2023** (the "Challenge Period Termination Date"). The Challenge Period Termination Date shall be extended until after a final order on any motion filed by the Committee seeking derivative standing to commence a Challenge Proceeding (a "Derivative Standing Motion"), provided that such Derivative Standing Motion is filed prior to the Challenge Period Termination Date and has attached thereto a copy of any pleading or motion setting forth the contents of the complaint or other document proposed to initiate the Challenge Proceeding. If on or before October 23, 2023 a Chapter 11 trustee is appointed in the Debtor's Chapter 11 case, or the Debtor's Chapter 11 case is converted to Chapter 7, then for purposes of this Order the right to commence a Challenge Proceeding shall apply to the duly appointed Chapter 11 or Chapter 7 trustee and the Challenge Period Termination Date shall be the date that is 60 days after the date

of such trustee's appointment.

9. In the event that no Challenge Proceeding is commenced by the Challenge Period Termination Date, any and all challenges and objections constituting a Perfection Challenge, by any party (including, without limitation, the Committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any successor case, and any other party-in-interest) **shall be deemed to have been forever waived and be barred**, and the Prepetition Debt shall be deemed to be allowed in full and shall be deemed to be allowed as a secured claim of the Bankruptcy Code for all purposes in connection with the Debtor's Chapter 11 case and any successor case involving the Debtor as debtor to the extent of the value of the Prepetition Collateral and any collateral subject to the Adequate Protection Liens. For the avoidance of doubt, the Prepetition Lender has not and shall not seek the allowance of postpetition interest and costs in connection with the Prepetition Obligations.

10. For the avoidance of doubt, the Challenge Period Termination Date shall not apply to the right of the Committee, if any, or any duly appointed Chapter 11 or Chapter 7 trustee, to bring suit against the Prepetition Lender on the basis of equitable subordination or recharacterization, or any other claim other than a Perfection Challenge.

11. Nothing in this Order shall vitiate or be deemed to affect the rights of the Surety (as defined in attached Schedule A) and Brookline Bank, and their respective past, present or future parents, subsidiaries or affiliates, and successors and assigns, as holders of or with respect to the Third-Party Cash Collateral Liens and the Third-Party Cash Collateral Accounts (as defined in attached Schedule A), or any replacement accounts or collateral. Nothing in this Order shall vitiate or be deemed to affect the rights of Delta Air Lines, Inc., Alitalia SpA, Societe Air France, and Airlines Reporting Corporation, and their respective past, present or future parents, subsidiaries or

affiliates, and successors and assigns, as holders of or with respect to the Airline LOCs (as defined in Schedule A) or any substitute or replacement letters of credit. The Debtor shall not seek to use, transfer or redeem any property in the Third-Party Cash Collateral Accounts, or direct any other entity to use, transfer or redeem any property in the Third-Party Cash Collateral Accounts, absent a separate Order of this Court. The Committee shall have until the expiration of the Challenge Period Termination Date to file a motion or commence an action challenging the status of any Third-Party Cash Collateral Accounts (as defined in Schedule A) as subject to the Third-Party Cash Collateral Liens (as defined in Schedule A) (a "Third-Party Cash Collateral Challenge") and, if no such challenge is timely commenced, then the stipulations of the Debtor and Prepetition Lender in Schedule A shall be binding on the estate, including any Chapter 11 trustee or Chapter 7 trustee. If a Third-Party Cash Collateral Challenge is timely commenced, either by filing a motion, pleading, or other document, then rights in and to the Third-Party Cash Collateral Accounts shall be subject to judicial determination in such proceeding. This Order grants the Committee standing to commence a Third-Party Cash Collateral Challenge. If on or before October 23, 2023, a Chapter 11 trustee is appointed in the Debtor's Chapter 11 case, or the Debtor's Chapter 11 case is converted to Chapter 7, then for purposes of this Order the right to commence a Third-Party Cash Collateral Challenge shall apply to the duly appointed Chapter 11 or Chapter 7 trustee and the Challenge Period Termination Date shall be the date that is 60 days after the date of such trustee's appointment. In the event that no Third-Party Cash Collateral Challenge is commenced by the Challenge Period Termination Date, then Surety shall be deemed to have a perfected, first priority Third-Party Cash Collateral Lien on the Third-Party Cash Collateral Accounts.

12. To the extent that Customer Trust Funds (as defined below) do not constitute property of the Debtor's estate, none of the Prepetition Liens, PMSI, Third-Party Cash Collateral Liens, or the Adequate Protection Liens constitutes a lien or security interest in the customer trust funds held in the Debtor's deposit account with JPMorgan Chase Bank (formerly First Republic Bank), Account No. ending in 7629, having a Petition Date balance in the amount of $2,119,139.81 and disclosed in the Debtor's Statement of Financial Affairs filed on July 21, 2023 [Dkt. No. 109, at p. 140, item #21] (the "Customer Trust Funds"). To the extent that the Customer Trust Funds are determined to be property of the Debtor's estate because not held in trust or otherwise, the Adequate Protection Liens shall constitute a lien upon and security interest in the Customer Trust Funds.

13. The Debtor shall file an actual to budget report covering the Updated Budget period through September 30, 2023 by **12:00 noon on October 3, 2023**. The Debtor shall file an actual to budget report covering the Updated Budget period October 1, 2023 through November 1, 2023 by **12:00 noon on November 3, 2023**.

14. If necessary, a continued hearing on the Debtor's authority to use Cash Collateral past November 18, 2023 shall be held in person in Courtroom No. 3, John W. McCormack Courthouse, 5 Post Office Square, Boston, Massachusetts, on **November 7, 2023 at 10:00 a.m.** The Debtor shall file an extended, updated Budget covering any such proposed future use of Cash Collateral by **12:00 noon on November 3, 2023**. Any objections to such proposed future use of Cash Collateral pursuant to such extended, updated Budget may be made at the continued hearing.

15. The Court shall retain jurisdiction to hear, determine and, if applicable, enforce the terms of, any and all matters arising from or related to the Financing Order as modified by this Order.

Dated: September 19, 2023

Janet E. Bostwick
United States Bankruptcy Judge

Schedule A

Third-Party Cash Collateral Liens. The Debtor and the Prepetition Lender each has acknowledged the existence as of the Petition Date of certain deposit accounts maintained as security for the Debtor's performance of its obligations to sureties and issuers of letters of credit for the Debtor's account, as described below (collectively, the "Third-Party Cash Collateral Accounts"):

(i) Wells Fargo Account Number XXXX-7367 [redacted] in the name of the Debtor, United States Surety Company ("USSC"), and American Contractors Indemnity Company ("ACIC"), having a Petition Date balance of approximately $779,000.00, which account secures the performance and payment of the Debtor's obligations to USSC, ACIC, and their respective past, present or future parents, subsidiaries or affiliates (collectively, the "Surety") for surety bonds issued by the Surety for the benefit of the United States of America and the State of California; and

(ii) Brookline Bank Account Number XXXXXX-6168 [redacted] in the name of the Debtor and Brookline Bank, having a Petition Date balance of $110,000.00, which account secures the performance and payment of the Debtor's obligations to Brookline Bank including on account of the bank's issuance for the Debtor's account of the following four letters of credit: (A) Letter of Credit Number 1747037220 issued for the benefit of Alitalia (the "Alitalia LOC"); (B) Letter of Credit Number 1747037230 issued for the benefit of Delta Air Lines, Inc. (the "Delta LOC"); (C) Letter of Credit No. 1747037420 issued for the benefit of Societe Air France (the "Air France LOC"): and (D) Letter of Credit Number 1747021000 issued for the benefit of Airlines Reporting Corporation (the "ARC LOC" and, together with the Alitalia LOC, the Delta LOC, and the Air France LOC, the "Airline LOCs").

The respective liens, security interests, and rights to payment (including setoff and/or recoupment rights, if any) held by the Surety (and any party to whose rights the Surety has or may become subrogated to) and Brookline Bank in and to the Third-Party Cash Collateral Accounts are collectively referred to as the "Third-Party Cash Collateral Liens" for purposes of this Order.