

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

SUPERIOR AIR CHARTER, LLC,¹

Debtor

Chapter 11

Case No. 20-11007 (CSS)

**DECLARATION OF EDWARD T. GAVIN, CTP, CHIEF RESTRUCTURING OFFICER
OF THE DEBTOR, IN SUPPORT OF DEBTOR'S CHAPTER 11 PETITION AND
FIRST DAY MOTIONS**

1. I am a Managing Director of Gavin/Solmonese, LLC (“G/S”). G/S was retained by the above-captioned debtor and debtor in possession (the “**Debtor**”) in April 2020 and intends to file an application with this Court seeking retention as the Debtor’s restructuring advisor in the above-captioned chapter 11 case (the “**Chapter 11 Case**”). I have been the primary person overseeing G/S’s engagement with respect to the Debtor’s restructuring efforts.

2. I have more than 20 years of corporate finance, advisory and restructuring experience. Prior to, and since founding G/S, I have provided restructuring advice to companies, creditors, shareholders, and other interested parties on restructuring transactions both in the context of a chapter 11 and on an out-of-court basis. I have served debtors in possession as CRO, financial advisor, asset sale advisor and in other roles. I earned a Master of Legal Studies degree from Pepperdine University School of Law and am presently a candidate for a Master of Dispute Resolution from the Straus Institute for Dispute Resolution at the Pepperdine University School of Law.

¹ The last four digits of the Debtor’s federal tax identification number are (2081). The Debtor’s principal place of business is 1341 W. Mockingbird Lane, Suite 600E, Dallas, Texas.

3. Based on my work as the Chief Restructuring Officer and my oversight of the work that G/S has performed thus far, I am generally familiar with the Debtor's day-to-day operations, business and financial affairs. I submit this declaration (this "**Declaration**") in connection with: (a) the Debtor's petition for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") filed on the date hereof (the "**Petition Date**") and (b) the relief requested by the Debtor pursuant to the pleadings described herein (collectively, the "**First Day Motions**").

4. Except as otherwise indicated, all facts and statements set forth in this Declaration are based upon (a) my personal knowledge or opinion, (b) information obtained from members of the Debtor's management team, employees or advisors, or employees of G/S working directly with me or under my supervision, direction, or control, (c) the Debtor's books and records maintained in the ordinary course of their business, or (d) my review of relevant documents and information concerning the Debtor's operations, financial affairs, and restructuring initiatives, or my opinions based upon my experience and knowledge.

5. I submit this declaration in support of the First Day Motions and pursuant to 28 U.S.C. § 1746. If called upon to testify, I could and would testify competently to the statements set forth in this Declaration, as the information in this Declaration is accurate to the best of my knowledge.

Preliminary Statement

6. Founded in 2009, the Debtor operated a popular charter air carrier which quickly grew from its California base to maintain operations on both coasts. At one time, the Debtor maintained a fleet of eighteen planes, although as of the date of this filing, the fleet has dwindled to only ten. Throughout its history of more than 111,000 flights, the Debtor has enjoyed a nearly

impeccable safety record, a reputation for good pilots and management, and overall reliability and service among its customers.

7. Notwithstanding its initial growth and operational expansion, the Debtor was beset by the incredibly tight margins common to the charter airline industry and was never able to operate profitably. Despite maintaining consistent bookings and flights, the Debtor was unable to meet a level of daily flight hours which would allow it to do more than break even on operating costs, leaving aside the burden of its fixed expenses. Compounding these issues were the company's inability to successfully penetrate the highly competitive East Coast market for private jet travel, due in large part to the unreliability of the planes the Debtor had acquired for that purpose.

8. Thus, the Debtor could ill afford the economic destruction that the worldwide Coronavirus (COVID-19) pandemic would come to cause across a spectrum of industries. In short, it decimated the Debtor's operations, with potential customers no longer able or willing to seek out the Debtor's services. Indeed, the aviation industry has been particularly hard hit in light of travel restrictions put in place across all of the states that the Debtor has traditionally served. The Debtor's cash flows dropped by essentially 100% almost immediately after the restrictions went into place. Because the duration of the COVID-19 crisis is indeterminate, the Debtor expects demand to remain very weak for many months to come. These conditions naturally exacerbated the Debtor's liquidity issues, and by mid-April 2020, it became apparent the Debtor had little choice but to ground its fleet and furlough most employees and crewmembers.

9. Coupled with steadily accumulating liabilities (including costly litigation relating to the unreliable planes acquired for east coast operations), the presently bleak outlook for the travel industry (and economy at large) would otherwise sound the death knell for the Debtor were

it not for the intervening Chapter 11 Case. The Debtor anticipates using the Chapter 11 Case to conduct a restructuring or orderly winddown of its estate, including, but not limited to, the sale of its remaining assets for the benefit of its creditors. In support of these efforts, the Debtor has secured debtor-in-possession financing from the DIP Lenders, which will enable it to meet its remaining obligations during this Chapter 11 Case.

10. To familiarize the Court with the Debtor and the relief sought in the First Day Motions filed in this case, this Declaration is organized into four (4) parts as follows (i) Part I describes the history, business and affairs of the Debtor, its corporate structure and business operations; (ii) Part II provides an overview of the Debtor's capital structure; (iii) Part III provides a description of the circumstances leading to the commencement of this Chapter 11 Case; and (iv) Part IV provides an overview of the relief requested in the First Day Motions and sets forth the relevant facts in connection therewith.

I. GENERAL BACKGROUND

A. Debtor Overview and Business Operations

11. The Debtor is a Delaware LLC formed on November 18, 2009, with its current headquarters in Dallas, TX. The Debtor is a Federal Aviation Administration (“**FAA**”) certified Part 135 air charter carrier. Until the recent COVID-19 disruption, the Debtor employed more than 100 employees, and operated with a combined fleet of twelve (12) aircraft, comprised of the following: (i) two Embraer Phenom 100 (“**P100**”) aircraft (the “**Purchased Aircraft**”); (ii) another P100 aircraft financed through UT Finance Corporation, with approximately \$258,000 remaining on its ten-year financing term (ending November 2020) (the “**Financed Aircraft**”); and (iii) nine airplanes leased through various lessors, including one P100 aircraft and eight Embraer Phenom 300 aircraft (collectively, the “**Leased Aircraft**”). The Leased Aircraft have between nineteen

and fifty-six months remaining on their respective leases. Immediately prior to the Petition Date, two of the lessors of the Leased Aircraft delivered Notices of Default to the Debtor and retook possession of the aircraft pursuant to the terms of the applicable leases.

12. Structurally, the Debtor is a wholly owned subsidiary of the non-debtor JSI, LLC (“**JSI**”). In turn, JSI is wholly owned by the non-Debtor JetSuiteX, Inc. (“**JSX**”). JSX likewise wholly owns non-debtor Delux Public Charter LLC (“**DPC**”, and together with JSI and JSX, the “**Non-Debtor Affiliates**”). The Non-Debtor Affiliates’ operations are unrelated to and unaffected by the Debtor’s case, except in the limited circumstances below as to DPC.

13. Like many air charter companies, the Debtor’s revenue primarily derived from customers who purchased “jet cards” from the Debtor, referred to as “SuiteKey Agreements” (the “**Agreements**”). Agreements were purchased by way of Non-Refundable Pre-Purchase Payments, in amounts ranging from \$100,000 to \$500,000 (the “**Agreement Payments**”). Entering into an agreement lets customers have access to the Debtor’s private charter services, allowing for flights within the Debtor’s primary service area (the “**PSA**”) on as little as forty-eight hours’ notice; the PSA comprised California, Nevada, Arizona, Utah, New Mexico, and Colorado, although other flights originating or ending in the PSA could likewise qualify. All funds from the Agreement Payments were retained and used in the Debtor’s general operations pursuant to the terms of the Agreements; the customers, meanwhile, maintained non-cash notional balances equal to the amount of their Agreement Payment, which were then reduced on a tiered hourly basis (with the reduction equal to the hourly rate for the flight chartered multiplied by the number of hours used per flight). The majority of customers had up to twenty-four (24) months to utilize the notional balance of their accounts; the balance of customers (approximately 40%) are on non-expiring Agreements.

14. Beyond the Agreement Payments, the Debtor has historically recognized revenue from sales of its airplanes from time to time. Most recently, the Debtor sold six planes in August 2019.

B. Relationships With the Non-Debtor Affiliates

15. In the ordinary course of business and for the sake of efficiency, the Debtor engages in certain affiliate transactions with Non-Debtor Affiliate DPC (the “**DPC Transactions**”). This relationship is detailed in part by that certain “Management Services Agreement” (the “**MSA**”) entered into between DPC and the Debtor on June 1, 2016, as amended January 1, 2019. Specifically, the Debtor relies on employees shared with DPC via the MSA, as well as on numerous support services that are provided by DPC; the employees and services span a variety of categories.² The MSA provides for those services and reimbursement of costs, which the Debtor and DPC coordinate and allocate without any markup or premium among the Debtor’s business and DPC’s business. The allocation amount was historically derived from the revenue of the respective entities; *i.e.*, the portion for which the Debtor was obligated to DPC was a percentage based on the Debtor’s revenue as compared to DPC’s revenue. The reimbursement obligations are bilateral depending on the category and expenses for a given month.³ It follows, then, that the portion for which the Debtor was responsible under the MSA had fallen to \$0.00, as its operations are presently shuttered and generates no revenue. As a result, the Debtor and DPC revised the MSA prior to the Petition Date in order to account for the Debtor’s current financial status, as detailed below.

² Such categories under the MSA include: (i) Pilot Chiefs and Maintenance, (ii) Chief Pilot, (iii) Director of Flight Technical, (iv) Director of Flight Training, (v) Maintenance, (vi) Safety, (vii) Sales, (viii) Guest Services, (ix) Marketing, (x) Business Development, (xi) Finance/HR/IT, (x) Office Space, (xi) Executives, (xii) Mission Control, and (xiii) Corporate Overhead.

³ In other words, some category expenses would be funded by DPC in the first instance, while the Debtor funded others in the first instance. The cumulative outlay by the two parties would be aggregated at month’s end, then allocations would be made according to the ratio referenced *supra*.

16. This longstanding historical practice of sharing employees and support services for the Debtor's business allowed the Debtor (as well as DPC) to realize otherwise unavailable synergies and efficiencies, and to ultimately pay costs below the amount that would be necessary were each business to maintain its own separate employee base and support services. For example, the Debtor and DPC benefit from lower overhead costs as a result of shared back-office and management services. It is my understanding that the Debtor and DPC have historically saved millions of dollars annually as a result of the dynamic set forth in the MSA; as a practical matter, it would be economically unsound if not impossible for the Debtor to have operated in the absence of such an agreement.

17. As previously indicated, the Debtor furloughed substantially all of its employees across its departments, some of whom were subject to the MSA, and others who were dedicated employees of the Debtor. As a result, the Debtor maintains only four employees who are solely dedicated to the Debtor; the Debtor also still shares services for four additional employees under the MSA (namely two executives, IT, and human resources). The continuation of this longstanding prepetition relationship between the Debtor and DPC pursuant to the MSA, even if on a very limited basis and for a finite duration (and as modified going forward), is critical to preserving the value⁴ of the Debtor's business as it pursues a value-maximizing transaction through this Chapter 11 Case.

18. I have analyzed the foregoing, and believe that the DPC Transactions are fair and reasonable to the Debtor, that they have historically provided significant benefits to the Debtor by allowing the Debtor to maintain the current team members working in their business and obtain critical business services at a fairly allocated cost, with no additional markup, profit, charges, fees,

⁴ Including, for instance, maintaining the Debtor's operating certificates in good standing.

or other payments being paid by the Debtor to DPC. Neither the Debtor nor DPC profit from this arrangement in any way. Indeed, based on the formulas previously governing allocation, the Debtor would not have been obligated to fund anything under the MSA, despite receiving the benefits of the same; in light of that, DPC and the Debtor amended the MSA immediately prepetition to provide for a simplified 75%/25% allocation among DPC and the Debtor respectively, subject to termination by either party and to the good faith efforts by both parties to ensure allocations remain reasonable over the term of the agreement. I believe the revised MSA to be fair and reasonable to the Debtor.

II. THE DEBTOR'S CAPITAL STRUCTURE

A. Secured Debt

19. The Debtor has no outstanding senior secured debt. The Debtor has no pre-petition secured creditors or lenders with a lien on any of the Debtor's "cash collateral" as that term is defined in Section 363 of the Bankruptcy Code. The Debtor's only pre-petition secured creditor is UT Finance Corporation with respect to the Financed Aircraft. As noted above, the Debtor owes approximately \$258,000 with regard to the remaining portion of the ten-year term of the Financed Aircraft (ending November 2020).

B. Demand Notes With JSX

20. The Debtor is a party to a series of promissory notes with JSX, issued between September 2019 and March 2020, in the principal sum of \$16.2 million (the "Notes"). The Notes are unsecured, payable upon demand and bear no interest. The Debtor is not required to make any payments under the Notes unless and until demand is made thereunder or an event of default occurs

which remains uncured. The Notes reflect a series of advances that were made prepetition by JSX to the Debtor to support its operations.⁵

C. Remaining Unsecured Debt

21. Aside from the unsecured Notes, the Debtor's remaining unsecured debt stems from a variety of sources, including (i) accrued and unpaid trade debt incurred in the ordinary course of the Debtor's business; (ii) claims by lease and contract counterparties for unpaid obligation; (iii) litigation claims relating to disputed maintenance fees as to former planes owned by the Debtor, with liability alleged against the Debtor of at least \$250,000; and (iv) customer claims on the basis of the non-refundable Agreement Payments, with a combined notional balance of approximately \$50 million. In the aggregate (i.e. including the Notes balance), the Debtor estimates its unsecured debt to total nearly \$75 million. Claims on account of rejected executory contracts and unexpired leases during the Case could cause the amount of unsecured claims to increase.

D. Equity

22. As discussed above, the Debtor is wholly owned by JSI.

III. EVENTS LEADING UP TO THE CHAPTER 11 CASE

23. While the Debtor's ultimate bankruptcy filing was precipitated by a number of factors, the unprecedented economic impact of COVID-19 on both the Debtor's operations and the economy at large proved to be a burden the Debtor could not bear. As this Court and others nationwide have seen, the aviation industry (if not the travel industry generally) has experienced a rapid decline in bookings and an increase in cancellations. For a business model as capital-intensive and thinly margined as the Debtor's business tends to be, this quickly rendered its operations no longer viable.

⁵ Immediately prior to the Petition Date, JSX advanced one final Note for approximately \$220,000 in order to assist with payment of bonuses otherwise due to certain furloughed pilots under state law.

24. As a result of the accelerated pace of the COVID-19 pandemic, the Debtor realized it would not have sufficient cash to fund operations, including its payroll obligations due and payable on and after April 30, 2020. The Debtor made efforts over the last month to alleviate its liquidity burden, including seeking financing based upon its existing aircraft or otherwise working with its existing lessors. Ultimately, it was clear that there was little option for any additional funding given the dramatic COVID-19-related reduction in passenger demand and general uncertainty about when demand will normalize in the future. The Debtor also explored the relief sponsored by the U.S. government (the “**Government**”) under the Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”). Ultimately, the Debtor found the applicable sources of funding under the CARES Act to be expressly prohibited for companies that have sought Chapter 11 protection.

25. Based on the above circumstances, the Debtor made the difficult determination that the filing of this Chapter 11 Case was in the best interests of the Debtor and its stakeholders. To assist in these efforts and to further ensure a smooth, value-maximizing journey through Chapter 11, the Debtor appointed me as Chief Restructuring Officer on April 24, 2020. The Debtor likewise appointed Jonathan Solursh, an experienced restructuring and turnaround professional as an Independent Manager immediately prior to this Petition.

26. The Debtor seeks to use the Chapter 11 process to reorganize its debts or seek an orderly liquidation of the Debtor’s assets. To that end, the automatic stay triggered upon the filing of this Chapter 11 Case will provide a necessary reprieve from persistent litigation matters and allow the Debtor to focus on maximizing value for all creditors, including its former customers. Absent a bankruptcy filing and the DIP Financing detailed below, the Debtor would not have the

working capital necessary to implement the contemplated wind-down because the Debtor would otherwise run out of cash shortly after the Petition Date.

IV. OVERVIEW OF FIRST DAY MOTIONS AND APPLICATIONS

27. In order to ensure a smooth transition of the Debtor's business operations into chapter 11, the Debtor has requested various types of relief in the First Day Motions filed concurrently with this Declaration. A summary of the relief sought in each First Day Motion, as well as the factual basis for each First Day Motion, is set forth below.

28. I have reviewed each of these First Day Motions (including the exhibits and schedules thereto). The facts stated therein are true and correct to the best of my knowledge, information and belief, and I believe that the type of relief sought in each of the First Day Motions: (i) is necessary to enable the Debtor to operate in chapter 11 with minimal disruption to their anticipated trajectory in this case; and (ii) is in the best interests of the Debtor and their stakeholders.

A. DIP Motion

29. The Debtor has negotiated and reached agreement on the DIP Facility, pursuant to which the Debtor, subject to Court approval, will be provided with a senior secured debtor-in-possession loan from JSX and DPC (the "**DIP Lenders**"). As discussed above, JSX wholly owns DPC and JSI LLC; JSI, LLC is the Debtor's parent.

30. Acting under my supervision, the Debtor's management has prepared a cash flow and operating budget ("**Budget**"). The Budget represents the Debtor's estimate of their near-term receipts and disbursements. The Budget is expressly premised on approval of the DIP Facility on an interim and final basis. Without the availability provided under the DIP Facility, the Debtor will be unable to fund this case.

31. I believe that the terms and amount of the proposed DIP Facility will permit the Debtor to meet its obligations in this Case. In particular, funds from the DIP Facility are expected to be used for (i) working capital requirements, including payments to employees, landlords, (ii) the Debtor's obligations pursuant to the MSA (as to be amended), and (iii) to fund fees under the DIP Facility.

32. As stated above, the Debtor sought financing options based upon its existing aircraft or otherwise working with its existing lessors, but was unable to obtain any such financing or relief. Given the current state of the aviation industry and the Debtor in particular (generating no revenue), it was clear their financing options were dramatically limited, notwithstanding the absence of any prepetition secured debt encumbering their assets (aside from the Financed Aircraft). As such, the Debtor engaged in parallel negotiations with the DIP Lenders.

33. Although, as noted, the DIP Lenders are ultimately affiliates of the Debtor, the Debtor negotiated with the DIP Lenders in good faith to ensure that the terms of the DIP Facility are consistent with "market" terms, and are fair and reasonable to the Debtor. To that end, the Debtor, on the one hand, and the DIP Lenders, on the other hand, each used separate counsel in negotiating the DIP Facility, and from the moment of my appointment, I was also integrally involved in those discussions for the Debtor. In addition, my team analyzed, at my direction, the terms of debtor-in-possession financings from other recent aviation cases to ensure that the terms of the DIP Facility were at least as competitive (if not substantially more so) than the terms used in those cases.⁶

⁶ See *In re Ravn Air Group, Inc.* (Bankr. D. Del. 20-10755 (BLS)) (utilizing a base rate plus 800 points provided by the debtors' prepetition lenders); *In re Miami Air International, Inc.* (Bankr. S.D. Fla. 20-13924 (BKC-AJC)) (utilizing a prime rate plus 1% in a funding provided by the debtor's parent company).

34. I believe that the terms of the DIP Facility are fair and reasonable to the Debtor and appropriate under the circumstances, and that the relief requested in the DIP Motion is both necessary and in the best interests of the Debtor's estate and its creditors. I also believe that the DIP Facility is on the best terms and conditions available to the Debtor. Also, as explained above, the proposed DIP Facility will provide the Debtor with necessary liquidity to fund and continue its limited operations during this Case and achieve its desired ends with respect to its estate.

B. Employee Wage Motion

35. As detailed above, as of the Petition Date, the Debtor maintains only four employees who are solely dedicated to the Debtor (collectively, the "**Direct Employees**"). The Employees are all full-time and non-unionized workers. In addition to its Employees, the Debtor shares the services of four additional employees (collectively, the "**Shared Employees**" and, together with the Shared Employees, the "**Employees**") of DPC under the MSA (namely two executives, IT, and human resources).

36. All Employees are paid salaries (collectively, the "**Salaries**") twice a month on the 15th and last day of the month. Prior to the shutdown of the Debtor's business, the average payroll was approximately \$1,100,000.00, including related withholding and other tax obligations. The Debtor's last regular payroll date prior to the Petition Date was April 15, 2020, and the Debtor's next payroll is scheduled for April 30, 2020. The Debtor estimates that, as of the Petition Date, there is an aggregate amount of approximately \$24,375.00 in earned but unpaid Salaries, owed to currently-employed Employees.

37. The Debtor has established certain benefit plans and policies for eligible Employees that provide certain medical, dental and vision plans, life insurance, disability insurance, a 401(k)

plan and other benefits which are described in more detail below (collectively, the “**Employee Benefit Plans**”). A brief description of the Employee Benefit Plans is provided below:

(i) **Medical/Dental/Vision Plans**

38. The Debtor maintains a choice of two High Deductible Health Plans with Health Savings Accounts, which are administered by United Healthcare (the “**Employee Health Plans**”), and which are partly funded through monthly premiums deducted from the paychecks of participating Employees and partly funded by the Debtor. The Debtor pays monthly premiums to the service providers. In addition, in connection with the Employee Health Plans, the Employees may contribute a portion of their pre-tax wages to health savings accounts (“**HSAs**”) for use on certain out-of-pocket medical care expenses. Each Employee must determine at the beginning of each enrollment period the amount to put toward the HSAs. The HSAs are administered by Optum bank.

39. The Employees are also offered a dental plan with United Healthcare (the “**Dental Plan**”). The Dental Plan is partly funded by participating Employees and partly funded by the Debtor. Participating Employees pay their portion of the monthly premium, which the Debtor deducts from the participating Employees’ paychecks.

40. In addition, the Employees are offered vision plans with United Healthcare (the “**Vision Plan**”) which is partly funded through monthly premiums deducted from the paychecks of participating Employees and partly funded by the Debtor.

41. On account of the Employee Health Plans, the HSAs the Dental Plan, and the Vision Plan, the Debtor, prior to the shutdown of the its operations, incurred an average monthly cost of \$91,000.00 in the aggregate, of which Participating Employees funded approximately \$27,000.00 per month. As of the Petition Date, the Debtor believes that there are accrued and unpaid monthly premiums or reimbursements in connection with the Employee Health Plans, the

HSA's the Dental Plan, and the Vision Plan in the aggregate amount of \$91,000.00. By this Motion, the Debtor seeks authority to (a) continue to provide the Employee Health Plans, the Dental Plan and the Vision Plan for its Employees in the ordinary course of business, (b) continue to honor obligations under such benefit programs, including any premiums and administrative fees and (c) pay all such amounts owed under the Employee Health Plans, the Dental Plan and the Vision Plan to the extent that they remain unpaid on the Petition Date.

(ii) Income Protection Plans: Life, AD&D, and Long Term Disability Insurance

42. All Employees receive Basic Life and Accidental Death and Dismemberment Insurance (the "**Basic Life and AD&D**"), equal to a maximum coverage of \$25,000.00 (subject to certain reductions based on the age of the employee) and sponsored entirely by the Debtor. In addition to the Basic Life and AD&D coverage the Employees are also offered voluntary life insurance and dependent life insurance in addition to the an optional Life and Accidental Death and Dismemberment Insurance coverage (the "**Optional Life and AD&D**" and, together with the Basic Life and AD&D, the "**Life and AD&D Coverage**"), which is funded entirely by the participating Employee. The Life and AD&D Coverage is offered through Anthem Blue Cross.

43. Additionally, the Employees are also offered long-term (the "**Long-Term Disability Insurance**") disability insurance covering 66.6% of the Employees' weekly pre-disability earnings up to a maximum of \$10,000.00 a month. The Long-Term Disability Insurance is paid for in its entirety by the Debtor.

44. Finally, certain eligible Employees are entitled to participate in a voluntary accident coverage plan (the "**Voluntary Accident Coverage**" and, collectively with the Life and AD&D Coverage and the Long-Term Disability Insurance, the "**Life Insurance Plans**"), offered through SunLife Accident Insurance, which pays additional amounts to cover expenses related to unexpected injuries and accidents in addition to any amounts available to the participating

Employee under his or her medical or other insurance plans. The Voluntary Accident Coverage is funded entirely by the participating employee.

45. On average, the Debtor incurs a monthly cost of approximately \$1,000.00 in connection with the Life Insurance Plans. As of the Petition Date, the Debtor believes that there are accrued and unpaid monthly premiums or reimbursements in connection with the Life Insurance Plans in the aggregate amount of \$0.00. By this Motion, the Debtor seeks authority to pay any and all prepetition amounts owed on account of the Life Insurance Plans and to continue its prepetition practices with respect to such benefits.

(iii) Retirement Plan

46. Employees are also eligible to enroll in a 401(k) plan administered by Empower Retirement (the “**Retirement Plan**”). Employees may contribute to the Retirement Plan each year through salary deferrals up to the IRS limit. Employee contributions total approximately \$40,000.00 per month and are remitted twice per month in connection with the Debtor’s payroll process. Employees are always 100% vested in their contributions and cannot forfeit the contributions. Additionally, the Debtor matches 50% of the first 8% of an Employee’s contributions to his or her 401(k). The matching contributions are fully vested after the applicable Employee has been employed by the Debtor for more than two years. The Debtor’s matching contributions total approximately \$20,000.00. Approximately 56 Employees currently participate and contribute to the Retirement Plan. By this Motion, the Debtor seeks authority to continue to honor its obligations with respect to the Retirement Plan in the ordinary course of business.

(iv) Accrued Vacation and PTO

47. Superior provides its Employees with 20-35 days (depending on the seniority of the applicable Employee) of flex paid time off (together “**PTO**”). As of the Petition Date, the currently-employed Employees have accrued approximately \$377,268.00 in unused PTO (the

“**PTO Obligations**”). Employees are be entitled under certain circumstances to be paid in cash for their accrued but unused PTO, upon the termination of their employment or otherwise. By this Motion, Superior seeks authority to (a) allow its Employees to continue to use their PTO in the form of paid time off and (b) make cash payments for accrued but unused PTO Obligations in the ordinary course of the Debtor’s business practice.

Business Expenses

48. Certain Employees are allowed certain business expense reimbursements including for, among other things, cell phone service, travel and meal expenses, expenses in connection with their employment duties, and other business expenses (collectively, the “**General Business Expenses**”). Employees submit expense reports detailing the General Business Expenses incurred, and the expense reports are channeled through a series of reviews for approval. The Debtor’s accounts payable department makes payments to Employees for General Business Expenses as expense reports are approved. The Debtor estimates that no General Business Expenses have been incurred but remain unpaid as of the Petition Date.

49. The Debtor’s inability to pay the General Business Expenses to the individual Employees would adversely affect the Employees’ morale and jeopardize the Debtor’s reorganization efforts. By this Motion, the Debtor seeks authority to continue its prepetition practices with respect to the General Business Expenses for such postpetition expenses incurred in the ordinary course of its business to the extent that such approval is necessary

Withholding Obligations

50. As an employer, the Debtor is required by law to withhold and remit federal, state and local taxes from Salaries and to pay social security taxes, Medicare taxes, state and federal unemployment insurance (collectively, the “**Payroll Taxes**”). The Debtor, in accordance with the Internal Revenue Code and applicable state law, pays an average of \$160,000.00 in biweekly

Payroll Taxes. As of the Petition Date, the Debtor owes approximately \$180,000.00 for the payroll period ending on April 30, 2020.

51. In addition to applicable Payroll Taxes, the Debtor also withholds certain contributions to savings, retirement plans, insurance contributions and other amounts as applicable and are required to transmit such amounts to third parties (together with Payroll Taxes, the “**Withholding Obligations**”). The Debtor believes that such withheld funds, to the extent that they remain in the Debtor’s possession, constitute moneys held in trust and therefore, are not property of the Debtor’s estate. Thus, whether or not such funds are prepetition amounts, the Debtor believes that directing such funds to the appropriate parties does not require Court approval. Nevertheless, out of an abundance of caution, the Debtor seeks authority to pay any outstanding amounts owed for Withholding Obligations, in the ordinary course of business, including those incurred prior to the Petition Date.

Furloughed Employee Obligations

(i) Furloughed Employee Obligations and Withholdings

52. As discussed above, prior to the Petition Date, the Debtor furloughed substantially all of its employees across many of its departments (collectively, the “**Furloughed Employees**”). Under the law of the applicable state, California, upon termination or furlough of an Employee, the Employee must be paid all of his or her unpaid wages, including accrued vacation or PTO time, immediately following such termination or furlough. The Debtor estimates that, as of the Petition Date, there is an aggregate amount of approximately \$840,720.00 in earned but unpaid Salaries and accrued PTO, owed to the Furloughed Employees (the “**Furloughed Employee Obligations**”)⁷ for the payroll period ending on April 30, 2020. Additionally, as of the Petition

⁷ Immediately prior to the Petition Date, JSX advanced one final Note for approximately \$220,000 in order to assist with bonuses otherwise due to certain furloughed pilots under state law.

Date, the Debtor estimates that it owes approximately \$66,692.00 for the payroll period ending on April 30, 2020 in Withholding Obligations on account of the Furloughed Employees.

(ii) **COBRA**

53. Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”), former employees, included those furloughed by the Debtor (the “**COBRA Participants**”) may continue insurance coverage under the Employee Health Plans, the Dental Plan, and the Vision Plan following the termination of their employment with the Debtor (the “**COBRA Benefits**”). More specifically, COBRA Participants are entitled by law to continue to receive COBRA Benefits for up to 18 months, and in some instances up to 36 months, following termination of employment. COBRA Participants are responsible for paying all premium costs associated with the COBRA Benefits to the Debtor, which the Debtor remits to the appropriate third-party provider.

54. The Debtor believes that any amounts held by the Debtor on account of the Cobra Benefits generally are held in trust by the Debtor and are not property of the estate. As such, the Debtor does not believe they need authority to remit such payments to the appropriate third-party providers. Nevertheless, out of an abundance of caution, by this Motion, the Debtor requests authorization to (a) remit all outstanding prepetition amounts incurred on account of the COBRA Benefits, upon entry of the Interim Order and Final Order, and (b) continue to offer the COBRA Benefits, including to those Employees who may be terminated after the Petition Date, and honor all obligations related thereto on a postpetition basis in the ordinary course of business consistent with their prepetition practices.

Payroll Administration Services

55. The Debtor uses the services of Ultipro (the “**Payroll Administrator**”) to provide, among other things, payroll processing, payroll tax calculations and filings, garnishment payments,

check preparation, and W-2 form processing for Employees (collectively, the “**Payroll Services**”). In connection with the Payroll Services, the Payroll Administrator calculates the amounts owed for certain Withholding Obligations each applicable payroll period. Prior to the respective payday, the Debtor transfers to the Payroll Administrator the amounts necessary to satisfy Salaries, Payroll Taxes, and garnishment obligations. The Payroll Administrator then processes direct deposit transfers for Salary to each Employee into the respective Employee’s bank account or issues a check if an Employee has not elected for direct deposit. The Payroll Administrator also remits the Payroll Taxes and garnishments to the applicable taxing authorities and third-party payees, respectively.

56. As of the Petition Date, the Debtor does not believe it owes any amounts to the Payroll Administrator on account of the Payroll Services. Out of an abundance of caution, however, by this Motion, the Debtor requests authorization to pay all outstanding prepetition amounts owed on account of the Payroll Services and to continue to pay the amounts associated with the Payroll Services on a postpetition basis in the ordinary course of business consistent with their prepetition practices.

57. I believe that the relief sought in the Wage Motion represents a sound exercise of the Debtor’s business judgment, and is necessary to avoid immediate and irreparable harm to the Debtor’s estate. I believe that without the relief requested in the Wage Motion being granted, there is significant risk that the Employees required for the Debtor’s success will seek alternative opportunities. Such a development would deplete the Debtor’s workforce, thereby hindering the Debtor’s ability to successfully conduct this Case.

C. Cash Management Motion

58. In the ordinary course of its business, the Debtor maintains a cash management system (the “**Cash Management System**”) that is comparable to the centralized cash management systems used by other similarly sized air carriers to manage cash flow in a cost-effective, efficient manner. The Debtor uses its Cash Management System in the ordinary course to transfer and distribute funds and to facilitate cash monitoring, forecasting, and reporting.

59. The Debtor’s accounting department maintains daily oversight over the Cash Management System and implements cash management control protocols for entering, processing, and releasing funds. Additionally, the Debtor’s accounting department reconciles the Debtor’s books and records on a monthly basis to ensure that all transfers are accounted for properly.

60. The Cash Management System is comprised of two bank accounts (the “**Bank Accounts**”) with First Foundation Bank. The Bank Accounts function as collection, operating, and disbursement accounts. The Cash Management System and Bank Accounts are organized to facilitate the seamless collection, management, and disbursement of funds used in the Debtor’s day-to-day business. More specifically, the Debtor’s operations are funded through the Bank Accounts which are used for, among other things, holding and collecting the Debtor’s cash, collecting receivables, making disbursements to third parties, including on account of accounts payable, remitting payments to fund payroll and certain related employee benefit obligations, and remitting wire payments and automated clearinghouse transfers.

61. From time to time, in the ordinary course of business, resources are shared between the Debtor and certain affiliated entities. These resources include funds, inventory, personnel, and logistics and operational services (collectively, the “**Intercompany Transactions**”). The Intercompany Transactions result in receivables and payables (the “**Intercompany Claims**”).

62. As described above, the Debtor and DPC engage in certain Intercompany Transactions. This relationship is detailed in part by that certain MSA initially entered into between DPC and the Debtor on June 1, 2016 and as amended January 1, 2019 and April 28, 2020. Specifically, the Debtor and DPC share certain employees and DPC provides numerous support services to the Debtor through the MSA. The shared employees and services span a variety of categories, including management, finance, information technology, and human resources, and are critical to the Debtor's continuing business and the administration of this case.

63. Pursuant to the MSA as amended on January 1, 2019, the Debtor and DPC historically allocated the shared costs between themselves in direct proportion to each entity's percentage of combined revenue (or for certain maintenance and mission control expenses, each entity's percentage of combined total flight hours or number of aircraft in active service). For the thirteen-month period ending February 29, 2020, the costs allocated between DPC and the Debtor pursuant to the MSA totaled approximately \$16.8 million. On average for such period, the Debtor's proportion of such expenses was approximately 37% and DPC's proportion approximately 63%. The Debtor's applicable proportion of expenses varied in any given month and ranged generally from 22%-39% of expenses. As further described in the First Day Declaration, however, the Debtor's revenue has evaporated in the recent weeks. Nevertheless, the Debtor continues to require the assistance of certain shared employees and various other services. Indeed, the various reporting and administrative components of this chapter 11 case, in addition to assisting the Debtor in formulating and executing on a process to maximize its assets is labor intensive. At present, the Debtor continues to share the services of four employees with DPC under the MSA (namely two executives, IT, and human resources) and share certain business expenses (such as for the shared corporate headquarters).

64. As a result of the parties' changed circumstances (including the Debtor's lack of revenue but requirement for continued assistance and incurrence of business expenses), the Debtor and DPC negotiated an amendment to the MSA in April 2020. Pursuant to the amended MSA, the shared costs are to be allocated 75% to DPC and 25% to the Debtor. This allocation is consistent with the allocation applicable to the last full of month of services (February 2020) before the disruptions of COVID-19 and the Debtor's cessation of flights.⁸

65. The revised allocation methodology and amended terms of the MSA represent an accommodation by both parties to the Debtor's changed circumstances. The MSA, as amended, has an initial termination date of June 1, 2020; however, such date may be extended on a monthly basis by either party in the absence of a termination notice. In addition, the Debtor may terminate the MSA at any time.

66. The terms of the amended MSA continue to permit the Debtor to access personnel and address certain business expenses with no mark up or premium. The Debtor believes that continuing this practice post-petition is the most efficient and reasonable approach to obtaining necessary services and addressing the covered business expenses.

67. The Debtor tracks all Intercompany Transactions under the MSA in its accounting system and can ascertain, trace, and account for all Intercompany Transactions and Intercompany Claims. The Debtor will continue to track Intercompany Transactions and Intercompany Claims on a post-petition basis. Disallowing the continued use of Intercompany Transactions would unnecessarily disrupt the Debtor's business and the Cash Management System to the detriment of the Debtor and its stakeholders.⁹

⁸ The revised allocation methodology may be further revised by the parties pursuant to the terms of the MSA.

⁹ By this Motion, the Debtor does not request authority to assume the MSA and any such assumption would be subject to further application to this Court. Instead, by this Motion, the Debtor requests authority to make certain payments to

68. I believe that it is critical that the Debtor continues to utilize its existing Cash Management System and perform its obligations under the MSA without disruption, and believe that the relief requested in the Cash Management Motion is both necessary and in the best interests of the Debtor's estate and its creditors.

D. Tax Motion

69. In connection with the normal operation of its business, the Debtor incurs or collects and remits certain taxes including sales, use, franchise, property, business and occupation, and various other taxes, fees, charges, and assessments (collectively, the "**Taxes and Fees**") to various federal, state, and local taxing and regulatory authorities (collectively, the "**Taxing Authorities**"). The Debtor remits such Taxes and Fees to the Taxing Authorities in connection with the operation of its business and the sale of its products, or through shipments of products. The Taxes and Fees are paid monthly, quarterly, semi-annually, or annually to the respective Taxing Authorities, depending on the given Tax or Fee and the relevant Taxing Authority to which it is paid. As of the Petition Date, the Debtor owes approximately \$186,000 in federal excise taxes related to the jet fuel used in its March 2020 commercial operations, which must be paid during the first month of the case.

70. With the exception of the jet fuel excise taxes, the Debtor believes that it is current on all other prepetition Taxes and Fees. In an abundance of caution, however, the Debtor seeks authority to pay any prepetition Taxes and Fees in the ordinary course of business owed to the Taxing Authorities; provided that payments on account of Taxes and Fees that accrued, in whole or in part, prior to the Petition Date but were not in fact paid or processed prior to the Petition Date shall not exceed \$200,000.00 on an interim and final basis, absent further approval of the Court.

DPC under the MSA and for the amounts owed thereunder solely as they relate to the allocation methodology to be accorded administrative priority.

71. Any regulatory dispute or delinquency that impacts the Debtor's ability to conduct its limited business could have a wide-ranging and adverse effect on the Debtor's operation as a whole, as described further in the Tax Motion. I believe that payment of the Taxes and Fees is in the best interest of the Debtor and its estate, will not harm unsecured creditors, and may reduce harm and administrative expense to the Debtor's estate.

E. Insurance Motion

72. The Debtor maintains one insurance policy directly, an All-Clear Aircraft Policy, policy number SIHL1-A11V (the "**Aircraft Insurance Policy**") obtained through United States Aviation Underwriters. The Aircraft Insurance Policy provides liability coverage related to the Debtor's operation of its fleet of aircrafts. The premium for the Aircraft Insurance Policy is \$379,505.00, which is payable by the Debtor in quarterly installments. Historically, the Debtor has made such payments in in the ordinary course of business as they become due.

73. Additionally, through payments to non-debtor affiliate Delux Public Charter LLC ("**DPC**"), under the MSA, the Debtor benefits from the coverage of certain insurance policies including policies covering, among other things, general liability, and directors and officers liability (the "**General Insurance Policies**"). As a result of the parties' changed circumstances (including the Debtor's lack of revenue but requirement for continued assistance and insurance), the Debtor and DPC have negotiated an amendment to the MSA that addresses shared services during this case, including the Debtor's obligations with respect to, and coverage under, the General Insurance Policies. Accordingly, the Debtor will seek a final cap, subject to modification prior to the final hearing, that incorporates the Debtor's obligations related to the General Insurance Policies under the modified MSA.

74. Continued coverage under the Aircraft Insurance Policy and the General Insurance Policies is essential to the preservation of the Debtor's business, assets, and in many cases, such coverage is required by applicable regulations, laws, and contracts governing the Debtor's business and operations. Furthermore, section 1112(b)(4)(C) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Moreover, maintenance of insurance coverage is required under the Operating Guidelines of the Office of the United States Trustee (the "**Guidelines**"), the Debtor's various contractual agreements, and/or prudent business practices. *See, e.g.*, Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees, Office of the United States Trustee (Revised Jan. 1, 2018).

75. By this Motion, the Debtor requests authority to continue honoring its insurance obligations by making payments under the Aircraft Insurance Policy, in the ordinary course of business, and paying certain insurance-related obligations to DPC under the MSA including authority to pay any prepetition amounts that may be due and owing or that come due and owing in the ordinary course of business in an aggregate amount not to exceed \$60,000.00 on an interim basis and an amount to be determined on a final basis. In addition, the Debtor requests authority to renew the Aircraft Insurance Policy and/or execute new insurance agreements in the ordinary course of business.

76. I believe the continuation of insurance coverage under the Aircraft Insurance Policy and the General Insurance Policies is essential to the Debtor's business and that it is in the best interests of its estate to permit the Debtor to honor its obligations related thereto. Any other

alternative could require considerable additional cash expenditures and would be detrimental to the Debtor's efforts to maximize the value of its estate.

F. Section 156(c) Application

77. Prior to the selection of Stretto ("**Stretto**") as claims and noticing agent, the Debtor obtained and reviewed engagement proposals from at least three reputable claims and noticing agents to ensure selection through a competitive process. I believe, based on all engagement proposals obtained and reviewed, that Stretto's rates are competitive and reasonable.

78. In view of the number of anticipated claimants in this Case, I believe that the appointment of Stretto as claims and noticing agent is both necessary and in the best interests of the Debtor's estate and its creditors.

Pursuant to 11 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true to the best of my information, knowledge and belief.

/s/ Edward T. Gavin

Edward T. Gavin, CTP
Chief Restructuring Officer
Superior Air Charter, LLC