

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

JustFly Corp., *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 20-11204 (JTD)

Jointly Administered

**ORDER GRANTING RECOGNITION OF
FOREIGN MAIN PROCEEDING AND CERTAIN RELATED RELIEF**

Upon the motion (the “**Motion**”)² of FlightHub Group Inc., in its capacity as the duly-appointed authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (the “**Debtors**”), for entry of an order pursuant to sections 105(a), 1145, 1504, 1507, 1510, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code (a) granting recognition of the Canadian Proceeding as a “foreign main proceeding” pursuant to chapter 15 of the Bankruptcy Code; (b) granting recognition of the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceeding; (c) recognizing, granting comity to, and giving full force and effect in the United States to the Canadian Proceeding and the Canadian Orders; and (d) affording the Debtors the protection of the automatic stay under section 362 of the Bankruptcy Code; the People of the State of California, acting by and through San Francisco City Attorney Dennis J. Herrera (the “**People**”), having filed the *Limited Objection by the People of the State of California, Acting by and Through San Francisco City Attorney Dennis J. Herrera, to the Motion for Recognition Regarding the Imposition of Automatic Stay of Section 362(a) of the Bankruptcy Code and/or Injunctive Relief Related to San*

¹ The Debtors in the chapter 15 proceedings and the last four digits of their identification numbers are: JustFly Corp. (8591), FlightHub Group Inc. (925-1), FlightHub Service Inc. (571-1), JustFly Inc. (602-7), SFP Corp. (5624), and 11644670 Canada Inc. (467-0). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 3333 boul de la Côte-Vertu, Suite 600, Montreal / Saint-Laurent, Québec, Canada H4R 2N1.

² Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

Francisco Litigation [Docket No. 28] (the “**People’s Objection**”); the Foreign Representative, on behalf of the Debtors, having filed the *Reply in Support of Recognition of Foreign Main Proceeding and Related Relief and Response to the San Francisco Objection* [Docket No. 31], which included (i) as Exhibit A thereto, the *Declaration of Christopher Cave in Support of the Reply and in Response to the San Francisco Objection* [Docket No. 31-1] (the “**Supplemental Cave Declaration**”), (ii) as Exhibit C thereto, an excerpt of an email from the People’s counsel to counsel to the Debtors, and (iii) as Exhibit D thereto, the *Demurrer to Complaint and Memorandum of Points and Authorities in Support of Demurrer* filed by the Debtor-Defendants in the litigation filed by the People against certain of the Debtors (the “**People’s Litigation**”), which is pending in the Superior Court of California, County of San Francisco (collectively, the “**Reply**”); the Bankruptcy Court having held a hearing to consider the relief requested in the Chapter 15 Petitions (the “**Hearing**”); the Bankruptcy Court having admitted into evidence the Cave Declaration, the Supplemental Cave Declaration, and the Reynaud Declaration without objection; the Bankruptcy Court having offered all entities at the Hearing the opportunity to cross examine Christopher Cave or Joseph Reynaud as witnesses; and upon: the Cave Declaration, the Supplemental Cave Declaration, and the Reynaud Declaration having been admitted into evidence as testimony; upon the record of the Hearing, including, without limitation, the arguments and evidence as set forth in the transcript of the Hearing attached hereto as **Exhibit A** (the “**Transcript**”), which are incorporated herein by reference as if set forth herein; and all of the proceedings had before the Bankruptcy Court; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND CONCLUDES THAT (THIS “ORDER”):

A. The findings and conclusions set forth herein, including, without limitation, the findings and conclusions of the Bankruptcy Court as set forth in the Transcript, which are

incorporated herein by reference as if set forth herein, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Bankruptcy 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 District of Delaware, dated February 29, 2012.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution.

D. Venue is proper in this district pursuant to 28 U.S.C. § 1410.

E. The Debtors have property in the United States, and the Debtors are eligible to be debtors in a chapter 15 case pursuant to, as applicable, 11 U.S.C. §§ 109 and 1501.

F. The Chapter 15 Cases were properly commenced pursuant to 11 U.S.C. §§ 1504, 1509, and 1515.

G. The Foreign Representative is a duly appointed "foreign representative" of the Debtors as such term is defined in 11 U.S.C. § 101(24).

H. The Foreign Representative is a corporation and, thus, an "entity" as such term is defined in 11 U.S.C. § 101(41).

I. The Foreign Representative has satisfied the requirements of 11 U.S.C. § 1515 and Bankruptcy Rule 1007(a)(4).

J. The Canadian Proceeding is a "foreign proceeding" within the meaning of 11 U.S.C. § 101(23).

K. The Canadian Proceeding is pending before the Canadian Court in Canada, where the Debtors have their “center of its main interests” as referred to in 11 U.S.C. § 1517(b)(1) and, as such, the Canadian Proceeding is entitled to recognition as a “foreign main proceeding” pursuant to 11 U.S.C. §§ 1502(4) and 1517(b)(1).

L. The Canadian Proceeding is entitled to recognition by the Bankruptcy Court pursuant to 11 U.S.C. §§ 1515 and 1517(a).

M. The Debtors and the Foreign Representative are entitled to all of the relief set forth in 11 U.S.C. § 1520, without limitation.

N. The Debtors and the Foreign Representative are entitled to all of the relief set forth herein under 11 U.S.C. §§ 1507 and 1521(a).

O. The relief granted hereby is necessary and appropriate to effectuate the objectives of chapter 15, to protect the Debtors and the interests of its creditors and other parties in interest, and is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code.

P. Absent the requested granted herein, the efforts of the Debtors, the Canadian Court, the Foreign Representative in conducting the Canadian Proceeding and effectuating the restructuring, and Canadian law may be frustrated by the actions of individual creditors, a result contrary to the purposes of chapter 15.

Q. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on, the Chapter 15 Petitions was given, which notice was deemed adequate for all purposes, and no further notice need be given.

R. All creditors and other parties in interest, including, without limitation, the Debtors, are sufficiently protected by the grant of relief ordered hereby in accordance with section 1522(a) of the Bankruptcy Code.

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Chapter 15 Petitions are granted.
3. The Canadian Proceeding is granted recognition as a foreign main proceeding as defined in 11 U.S.C. § 101(23) pursuant to 11 U.S.C. § 1517(a).
4. The Canadian Proceeding is a collective, court-supervised proceeding governed in accordance with applicable Canadian law, as it may be amended from time to time, and is granted recognition as a foreign main proceeding pursuant to 11 U.S.C. § 1517(b)(1) and is entitled to the protections of 11 U.S.C. § 1520(a), including, without limitation, the application of the protection afforded by the automatic stay under 11 U.S.C. § 362 to the Debtors and to the Debtors' property that is within the territorial jurisdiction of the United States.
5. FlightHub Group Inc. is the duly appointed foreign representative of the Debtors within the meaning of 11 U.S.C. § 101(24), is authorized to act on behalf of the Debtors in the Chapter 15 Cases, and is established as the exclusive representative of the Debtors in the United States.
6. The Bankruptcy Court determined that: (a) the People's Objection is, in substance, a motion to have the Bankruptcy Court recognize that the automatic stay under section 362(a) of the Bankruptcy Code does not apply to the People's Litigation because the People are enforcing police and regulatory powers under section 362(b)(4) of the Bankruptcy Code; and (b) the interest being

pursued by the People is a pecuniary interest and not a police and regulatory interest, and the Bankruptcy Court found that the exception in section 362(b)(4) of the Bankruptcy Code does not apply to the People's Litigation and, therefore, the Debtors have the benefit of the automatic stay under section 362(a) of the Bankruptcy Code with respect to the People's Litigation.

7. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Bankruptcy Court at the Hearing, or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.

8. All persons and entities subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with the Canadian Orders or this Order, including, without limitation, commencing, continuing, or enforcing any action or legal proceeding against the Debtors based on any claims, liabilities, and/or causes of actions against the Debtors, including, without limitation:

a. taking or continuing any act to obtain possession of, or exercise control over, including, without limitation, attaching, repossessing, seizing, or disposing of, as applicable, the Debtors, or any of their property (including, without limitation, intangible property or any proceeds thereof (collectively, the "**Property**"));

b. transferring, encumbering, relinquishing, or disposing of any Property other than to the Foreign Representative;

c. commencing, continuing, or enforcing any action or legal proceeding (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative, or regulatory action, proceedings, or process whatsoever), including, without limitation, by way of counterclaim (each, individually, an "**Action**") against the Debtors or any of the Property;

d. any judgment, wherever and whenever obtained, to the extent such judgment is a determination of a liability of the Debtors with respect to any debt or liability cancelled, discharged, or restructured as a result of Canadian law, is unenforceable in the United States;

e. commencing or continuing any act or Action to create, perfect, or enforce any lien, set-off, or other claim against the Debtors or the Property, including, without limitation, rights under any contracts with the Debtors;

f. commencing any suit, action, or proceeding against the Debtors, the Foreign Representative, or any of their respective successors, directors, officers, agents, employees, representatives, advisors, or attorneys in respect of any claim or cause of action, in law or in equity, arising out of or relating to any action taken or omitted to be taken in connection with the Chapter 15 Cases or the Canadian Proceeding;

g. declaring or considering the filing of the Canadian Proceeding or the Chapter 15 Cases a default or event of default under any agreement, contract, or arrangement; and taking any action in contravention to or inconsistent with the Canadian Orders, including, without limitation, against the Debtors, or any of the Property; provided, however, for the avoidance of doubt, this Order shall enjoin persons and entities subject to the jurisdiction of the United States from taking any actions, including, without limitation, the actions enumerated in (a) through (g) above, only to the extent such actions are inconsistent with the Canadian Orders or would otherwise interfere with the enforcement or implementation of the Canadian Orders.

9. The administration, realization, and distribution of all or part of the assets of the Debtors within the territorial jurisdiction of the United States is entrusted to the Foreign Representative, and the Foreign Representative is established as the exclusive representative of the Debtors in the United States.

10. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules, the Local Rules, or orders of the Bankruptcy Court.

11. Nothing in this Order shall prevent any persons or entities from submitting a proof of claim and pursuing such claim in the Canadian Proceeding or prejudice any rights of any persons or entities from objecting to any such claim or otherwise participating in any claim process in the Canadian Proceeding.

12. Nothing in this Order shall enjoin or otherwise bar the United States Federal government from exercising police and regulatory power (other than the enforcement of a money judgment) as set forth in sections 362(b)(4) or 1521(d) of the Bankruptcy Code; provided that

any claim (as defined in section 101(5) of the Bankruptcy Code) of the United States Federal government shall be asserted in the Canadian Proceeding and treated as set forth in the Canadian Proceeding.

13. Nothing in this Order prevents any persons or entities from seeking from the Bankruptcy Court relief from any provision of this Order or prejudices the rights of any persons or entities from objecting to any such request, and the Bankruptcy Court shall retain exclusive jurisdiction with respect to any such request.

14. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceeding, this Order, the Chapter 15 Cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded to such persons under 11 U.S.C. §§ 306 and 1510.

15. No later than five (5) business days after its entry or as soon as practicable thereafter, the Foreign Representative shall serve, or cause to be served, this Order on the Notice Parties (as defined in the Scheduling Order) in accordance with the procedures set forth in the *Order (A) Scheduling Hearing on Chapter 15 Petitions and Recognition and (B) Specifying Form and Manner of Service of Notice* (the “**Scheduling Order**”). Such service and notice is good and sufficient service and adequate notice for all purposes.

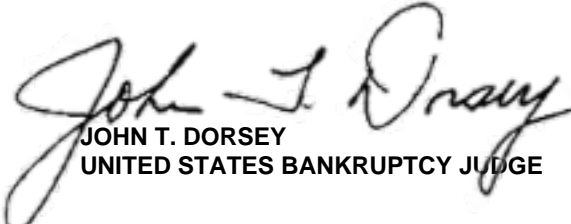
16. This Order is without prejudice to the Foreign Representative requesting any additional relief in the Chapter 15 Case, including, without limitation, seeking recognition and enforcement by the Bankruptcy Court of any further orders of the Canadian Court.

17. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted by this Order.

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

19. Notwithstanding any applicability of any Bankruptcy Rules or Local Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

Dated: June 25th, 2020
Wilmington, Delaware



JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

Exhibit A
Transcript of the Hearing

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 15
JUSTFLY CORP., et al., Case No. 20-11204 (JTD)
Debtor in a Foreign Proceeding. Courtroom No. 5
2:00 P.M. June 17, 2020

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

TELEPHONIC APPEARANCES:

For the Foreign Representative: David M. Klauder, Esquire
BIELLI & KLAUDER, LLC
1204 N. Market Street
Wilmington, Delaware 19801
- and -
Marc J. Carmel, Esquire
Serena G. Rabie, Esquire
MCDONALD HOPKINS LLC
300 North LaSalle, Suite 1400
Chicago, Illinois 60654

Audio Operator: Al Lugano
Transcription Company: Reliable
1007 N. Orange Street
Wilmington, Delaware 19801
(302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

1 TELEPHONIC APPEARANCES (Continued):

2 For the People of the
3 State of California:

John Carroll, Esquire
COZEN O'CONNOR
1201 North Market Street, Suite 1001
Wilmington, Delaware 19801

4
5 - and -

6 Edward J. Tredinnick, Esquire
7 GREENE RADOVSKY MALONEY SHARE
& HENNIGH LLP
8 1 Front Street, Suite 3200
San Francisco, California 94111

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MATTERS GOING FORWARD:

2 Motion for Recognition of Foreign Main Proceeding and Request
3 for Certain Related Relief (Filed 5/22/202; Docket No. 6)

4 **Ruling: 46**

5
6 EXHIBITS:

7 Declaration of Christopher Cave

ID Rec'd

9

8 Declaration of Joseph Reynaud

9

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (Telephonic proceedings commenced at 2:01 p.m.)

2 THE COURT: Good afternoon, everyone. This is
3 Judge Dorsey. We are on the record in JustFly; Case No. 20-
4 11204.

5 I'll go ahead and turn it over to debtors'
6 counsel.

7 MR. KLAUDER: Your Honor, good afternoon. David
8 Klauder, co-counsel to the foreign representative. With me
9 on the line are my co-counsel; two attorneys at McDonald
10 Hopkins, Marc Carmel and Micah Marcus. I believe Mr. Carmel
11 will begin and address the court. He has been admitted *pro*
12 *hac vice*.

13 THE COURT: Okay. Thank you.

14 MR. CARMEL: Thank you, Your Honor. This is Marc
15 Carmel.

16 As Mr. Klauder mentioned, with us today is Micah
17 Marcus. To the extent that Your Honor wants to hear live
18 testimony Mr. Marcus will handle that.

19 In addition, there are some executives from the
20 company. There is Chris Cave, who is the chief operating
21 officer; Marc Ghobriel, who is the chief financial officer;
22 and Sona Bedrossian, the general counsel. They're here
23 because this is an important hearing for this company and
24 this enterprise, Your Honor.

25 As we will talk about when we get into the details

1 this case happened abruptly and I'm sure I'm not the first
2 person to be before Your Honor to let you know that the COVID
3 situation has effected, you know, a company that is before
4 Your Honor. This one is one that is an online travel agency
5 with a platform that sells airline tickets. So, you can
6 imagine in light of both the COVID and the quarantine, as a
7 result of that, that that has had a significant impact on
8 JustFly and the FlightHub Enterprise.

9 So, if Your Honor will indulge me I'd like to give
10 you a little bit of background because this is actually the
11 first time that we're before Your Honor on this matter, and
12 then go into the argument.

13 THE COURT: Yes. Thank you.

14 MR. CARMEL: And so before we actually dive into
15 that I'd just like to thank Your Honor and Your Honor's
16 staff. This has been very easy for us in terms of filing the
17 documents and getting the relief we have requested so far and
18 we really appreciate it. So, we filed, what they call, a BIA
19 or Bankruptcy & Insolvency Act for one of the entities on
20 April 30th in Canada. Then on May 8th the entities filed
21 under the Companies' Creditors Arrangement Act, which is the
22 CCAA, in Canadian (indiscernible). That was on the 8th.

23 The one entity that had filed under the BIA was
24 converted. So, we have all six entities in Canada preceding
25 under the CCAA with the hope of ultimately having a plan of

1 arrangement, which is similar to a Chapter 11 plan, partly
2 because of the litigation from the City of San Francisco and
3 the desire for the company and the enterprise to have the
4 benefit of an injunction in the United States. The
5 enterprise filed their Chapter 15 petitions on May 22nd and
6 that's what brought these companies in front of Your Honor
7 and to some extent within the jurisdiction of the United
8 States Bankruptcy Court.

9 Your Honor may remember that we asked for the
10 minimum amount of relief when we filed the case on May 22nd
11 with the hope of giving people time to analyze the situation
12 in the United States and with the hope of not creating an
13 emergency for Your Honor and Your Honor's staff. That worked
14 out to some extent. We did not ask for a provisional relief
15 which is, obviously, something that is specific to a Chapter
16 15 as opposed to a Chapter 11. The reason we did that is we
17 wanted to give people time if we could.

18 Ultimately, there was a scare. We thought that
19 the City of San Francisco was going to proceed with
20 litigation and I'll explain as we go into this why that would
21 be particularly problematic. We filed a motion for
22 provisional relief. Upon filing that motion we received
23 sufficient assurances from the City of San Francisco that
24 they would not proceed with their litigation until after Your
25 Honor resolved the issues that are up for today. As a result

1 of that again not wanting to create any unnecessary
2 emergencies and not wanting to tax anyone's resources
3 unnecessarily we put that --

4 (No audio)

5 THE COURT: For those who aren't on Zoom, Mr.
6 Carmel lost his audio. We can't hear you, Mr. Carmel.

7 UNIDENTIFIED SPEAKER: Your Honor, I think he's
8 talking to someone to try to get connection back.

9 OPERATOR: Mr. Carmel is back on.

10 THE COURT: Mr. Carmel?

11 MR. CARMEL: I apologize for that, Your Honor.

12 THE COURT: It's happened to me too. So, not a
13 big deal.

14 MR. CARMEL: Hopefully that will be the last time,
15 but if it's not I will rejoin as soon as possible again.

16 So, we didn't want to tax anyone's resources and
17 so we were able to put off that hearing and we're before Your
18 Honor today seeking recognition of our foreign main
19 proceedings which were -- the request was filed on May 22nd
20 and seeking an injunction related to that.

21 As Your Honor may note we received one objection
22 to the motion that's from the City of San Francisco. We also
23 communicated with the United States Department of
24 Transportation through the Department of Justice and were
25 able to resolve all of their concerns with changes to the

1 proposed order. We provided a modified proposed order in a
2 comparison form as Exhibit B to the reply and served it out
3 on all folks. Your Honor, the changes that are in there
4 reflect changes that were sought by the United States
5 Department of Justice and will allow the Department of
6 Justice and the Department of Transportation to continue
7 their investigation and they have no objections to the relief
8 we're requesting.

9 You know, this is going to be something that we're
10 going to repeat throughout today's hearing. We think that
11 this is incredibly important that there is a Department of
12 Justice investigation that is proceeding and they are not
13 prevented from pursuing that investigation and pursuing their
14 police and regulatory powers. We believe that we will
15 ultimately be able to resolve any concerns that they have.

16 As we'll talk about today we have been working
17 with our regulatory agencies and addressing concerns as they
18 come up. We don't envision that that is going to change, but
19 if it is, Your Honor, they still have whatever police and
20 regulatory powers they are entitled to.

21 The motion for recognition relies on three
22 declarations, essentially. There's the initial declaration
23 from Christopher Cave, the chief operating officer; that's
24 under Docket No. 3. He filed and submitted a supplemental
25 declaration that was filed with the reply; that's Exhibit A

1 under Docket No. 31. We're also relying on the declaration
2 of Joseph Reynaud. He is a partner at Stikeman Elliott, the
3 company's Canadian counsel; that declaration was filed with
4 the motion for recognition at Docket No. 4.

5 Your Honor, the witnesses are available and
6 subject to cross examination as well as redirect and I ask
7 you, Your Honor, how would you prefer to deal with this.
8 We'd like to offer those declarations as evidenced today in
9 support of our motion and the relief we're requesting in the
10 revised proposed order that was attached to the reply. And
11 we're fine to proceed with the court accepting the
12 declarations or proffering the testimony or submitting the
13 evidence through direct examination.

14 THE COURT: Is there any objection to the
15 introduction of the declarations?

16 (No verbal response)

17 THE COURT: Okay. They're admitted without
18 objection.

19 (Declaration of Christopher Cave, admitted)

20 (Declaration of Joseph Reynaud, admitted)

21 THE COURT: Does anyone wish to cross-examine the
22 witnesses?

23 (No verbal response)

24 THE COURT: Let the record reflect there was no
25 response.

1 So, you can proceed, Mr. Carmel.

2 MR. CARMEL: Thank you, Your Honor.

3 The San Francisco objection is limited. They've
4 agreed with the debtors that the debtors are entitled to
5 their recognition under the bankruptcy code. We think that's
6 important because we need the relief and they're the only
7 party that had any concerns that were filed. Again, the
8 United States Department of Transportation via the Department
9 of Justice expressed concerns that were also addressed.

10 We heard from the United States Trustees Office
11 that while they do not plan to be and participate in today's
12 hearing that they also agree with the relief that we're
13 requesting in the proposed order. And so it really comes
14 down to the City of San Francisco's objection and that only
15 relates to the scope of the injunction that we have
16 requested. It would enjoin the City of San Francisco's
17 litigation.

18 The City of San Francisco can argue their case.
19 Basically, what they put in the objection was the fact that
20 they believe their exercising police and regulatory powers.
21 As we talked about in our reply and as I would like to
22 address, we don't believe that's a proper exercise and
23 something that should be carved out from the stay that we're
24 asking for Your Honor as set forth in the revised proposed
25 order.

1 Your Honor, before we get to that there is,
2 obviously, in terms of seeking recognition of the foreign
3 main proceedings there is a number of requirements that any
4 entity would have to satisfy. We believe we've satisfied
5 those as set forth in the motion and supported by the
6 declarations.

7 There is no objection to that and while I can go
8 through and talk through piece by piece how we satisfy the
9 required standards I'm also happy to rely on the motion in
10 the declarations which are now in evidence and proceed right
11 to the heart of the matter.

12 THE COURT: I've reviewed the motion and the
13 declarations. So, you may proceed.

14 MR. CARMEL: Thank you, Your Honor.

15 So, San Francisco believes that its actions should
16 proceed because it filed a complaint that it argues is an
17 exercise and regulatory powers. We believe that San
18 Francisco is incorrect and that the action should be stayed.

19 We -- you will see in the proposed order and as
20 we'll talk about today there's, essentially, three ways to
21 look at this:

22 There's the automatic stay which is, obviously,
23 given to us under the bankruptcy code, but has a carve-out
24 for police and regulatory powers under 362(b)(4).

25 Secondly, there's a Canadian order which we define

1 as the initial order which provides for an injunction
2 currently through July 31st, 2020 in Canada entered in the
3 CCAA proceedings which we intend to get extended at the right
4 time.

5 Then the third way that we look at the injunctive
6 relief that we're asking for is by asking for an injunction
7 as set forth in the proposed order that would specifically
8 prevent the City of San Francisco from going forward, but
9 also specifically allow the United States Department of
10 Justice and the Department of Transportation to go forward
11 and continue, like I said, their investigation. And if they
12 have other police and regulatory powers to allow them to do
13 that.

14 There is a number of hurdles for the City of San
15 Francisco to get over before they're objection would be
16 successful and for the reasons we set forth in the reply, as
17 supported by the evidence that we proposed we believed that
18 there are a number of essentially alternative ways in which
19 you can overrule the objection and rule in favor of the
20 injunction that we're asking for.

21 This is important because I believe that the only
22 evidence that you are going to have today in front of you is
23 evidence from the debtors, JustFly and FlightHub, but
24 notwithstanding that if there is evidence presented by the
25 City of San Francisco we are ready to dispute that.

1 So, the first issue is looking at Section 105,
2 which provides authority this for bankruptcy court to enter
3 an injunction. Bankruptcy courts issue injunctions that are
4 broader than the automatic stay all of the time. As we set
5 forth in our reply the more typical scenario is an injunction
6 that incorporates parties that are not subject to the
7 automatic stay being subject to the automatic stay. That is
8 not what we're looking for today.

9 What we're looking for today is for you to enjoin
10 the San Francisco litigation and even if San Francisco is
11 correct and even if you find that their exercising police and
12 regulatory power, Your Honor, we would direct you to the case
13 in W.R. Grace where the court actually found that the
14 governmental unit was exercising police and regulatory power,
15 but nonetheless entered an injunction that prevented that
16 party from going forward.

17 THE COURT: Let me ask you a question, Mr. Carmel.
18 Is it procedurally proper to ask for a 105 injunction based
19 on just a motion? Doesn't that require an adversary
20 proceeding?

21 MR. CARMEL: Your Honor, we believe that, number
22 one, it is appropriate and is consistent with, at least, some
23 precedent in this jurisdiction to request an injunction via a
24 motion. If you would like we could file a complaint and an
25 adversary proceeding and proceed that way, but it's important

1 to know in the context of what we're talking about today that
2 the City of San Francisco is well aware and has been well
3 aware of the relief that we're requesting.

4 We filed our motion on May 22nd. So, we're almost
5 a month into the case. They have had plenty of time to
6 consider the motion and the relief that we're asking for, and
7 so I think that we'd be -- I believe that there's precedent
8 that supports doing this by motion, but more over we would
9 just be putting form over substance to ask us to restart the
10 process and file an adversary proceeding to get the same
11 injunction that we believe is appropriate.

12 THE COURT: Okay. Go ahead.

13 MR. CARMEL: And, there is another case also in
14 this district. So, what we're asking for is not
15 unprecedented. In this same jurisdiction for the same type
16 of relief that we're asking for in situations where the -- in
17 W.R. Grace, for example, the court considered the standards
18 for injunctive relief which we satisfy and I can get to in a
19 minute.

20 There is also the principle of comity. We're,
21 obviously, in a Chapter 15. This is different from a Chapter
22 11. We still get some of the benefits of a Chapter 11, but
23 we also get the fact that what we're asking for is an
24 extension of the initial order which provides authority
25 because the initial order was secured by a fair process

1 consistent with public policy and I'll get into that.

2 San Francisco is seeking, essentially, a
3 declaratory judgment that it is exercising its police and
4 regulatory powers. So, when we talk about something that is
5 inappropriate I actually think it's inappropriate for them to
6 think that the way they drafted their objection would be
7 sufficient to carve them out of the stay or the injunction
8 that we're asking for.

9 My fourth point is that San Francisco does not
10 have police and regulatory power for the reasons that we set
11 forth in the demurrer that we attached and that has been
12 filed in the litigation in the City of San Francisco. So,
13 obviously, when dealing with police and regulatory power
14 364(b)(4) is not written in a way that I can easily quote it,
15 but the bottom line is what it addresses is a governmental
16 unit could exercise its own power. It doesn't have that
17 power. The Department of Transportation has power to regulate
18 us. They are regulating us, but as a result of that the City
19 of San Francisco is trying to exercise a power it doesn't
20 have.

21 Finally, Your Honor, even if we are not successful
22 on any of the prior four arguments the fifth one knocks this
23 out as well. San Francisco is seeking to protect pecuniary
24 interests not public interests; therefore, it is not
25 exercising police and regulatory power. I understand in

1 their objection that they cite and reference a statute that
2 they say is an exercise of police and regulatory power.

3 For the reasons that are set forth in our reply,
4 and I'm happy to address today, the jurisprudence in Delaware
5 and in the Third Circuit specifically looks at a subjective
6 test where you look at the facts and circumstances in front
7 of you, not an objective test which is used in other
8 jurisdictions where you just looked at the law and used that
9 to determine whether someone or a governmental unit is
10 exercising police power versus exercising pecuniary power.

11 Here, if you look at the facts and our witnesses
12 have presented a significant amount of testimony that, at
13 least, this point is uncontroverted, the City of San
14 Francisco is clearly exercising pecuniary interest. If they
15 try to explain to you something different I think the facts
16 in front of you and the evidence in front of you is important
17 to understand what is at issue here and it's basically a
18 money claim. Whether they dress it up as restitution or
19 penalties the bottom line is its money and it's not fair to
20 the rest of our restructuring and to the rest of our
21 creditors that that would take a seat in front of anyone else
22 and a priority. That's just not the way bankruptcy is meant
23 to be.

24 So, if I can specifically get into the arguments
25 and given that you have read all the pleadings, and I've

1 talked about them, I'll try to make this a little bit less in
2 depth, but if you want to talk about any of the cases I'm
3 happy to do it.

4 So, in terms of the first argument, which is the
5 Section 105 injunction, we rely on two cases; one is the W.R.
6 Grace case, which I've talked about, and the other is
7 Panthera, which is a Third Circuit case 733 F.2d 267. These
8 are cases where the bankruptcy court was comfortable
9 enjoining a party that is a governmental agency that was
10 exercising police and regulatory power.

11 And we think those cases are incredibly important
12 in thinking about the injunction that we're seeking which is
13 to the extent you want to go through the elements of the
14 likelihood of success on the merits the significant harm that
15 the debtors will suffer, the lack of harm to the San
16 Francisco, and the fact that the public interest supports
17 this injunction I'm happy to go through each of those
18 elements.

19 THE COURT: I've read the papers. You can move
20 past that.

21 MR. CARMEL: Okay. So, we'll rely on what we put
22 in subject to an ability to readdress this after hearing the
23 City of San Francisco.

24 The second argument is the principle of comity
25 that supports the injunction that we're asking for. Like I

1 said, the Canadian court has entered the initial order and
2 provided for a stay that is broader than the automatic stay
3 and includes governmental entities. And for that, in terms
4 of the principles of comity and the fact that they support
5 deference to the foreign court so long as the foreign
6 proceedings are procedurally fair, which they were, and do
7 not contravene the laws or public policy of the United
8 States, which they don't, and for that we cited Victrix,
9 which is a Second Circuit case, and Sino-Forest, which is a
10 Southern District of New York case.

11 Given that the United States issues injunctions
12 against governmental actors including under the W.R. Grace
13 case and the Third Circuit case we think that the relief that
14 was granted in Canada is consistent with US law and should be
15 respected here.

16 The third argument goes without saying. San
17 Francisco's objection reads a lot like a declaratory judgment
18 that San Francisco is exercising police and regulatory power,
19 but they actually don't even provide the context of Delaware
20 and Third Circuit law which follows a subjective test. They
21 spend their objection talking about the statute which is not
22 the way that courts in this jurisdiction make determinations
23 about police and regulatory power.

24 Then the fourth argument is that San Francisco is
25 not exercising its police and regulatory power. We rely upon

1 the arguments set forth in the demure to satisfy that.

2 Then the final point is a very important one;
3 although, we think that you actually don't have to get to
4 this point to rule in favor of us which is that even if San
5 Francisco is not preempted it cannot exercise police or
6 regulatory power because its interests are pecuniary. And,
7 Your Honor, in this jurisdiction the case law is clear that
8 the automatic stay is broadly determined and that police and
9 regulatory power exception is narrow. This is supported by
10 the THG Holding case, and I'm not going to try to summarize
11 that case because that is Your Honor's case and I', sure you
12 know that better than I do. And then also supported by the
13 Nortel Networks decision for District of Delaware. I believe
14 there is also a Third Circuit on Nortel.

15 Essentially, the exception under 362(b)(4) is
16 meant to prevent debtors from submitting bankruptcy petitions
17 principally to evade impending governmental efforts to invoke
18 police powers and to deter ongoing debtor conduct that would
19 threaten public safety or welfare. That is from the Nortel
20 case. That is clearly not what is happening here. Clearly,
21 this court does not need to be concerned with the fact that
22 the debtors before Your Honor filed these Chapter 15's so
23 that they could evade some sort of governmental efforts.
24 Obviously, the economic situation that has impacted the
25 debtors is laid out in the evidence and the fact that we're

1 actually continuing to subject ourselves to the correct
2 regulatory agencies with the Department of Transportation to
3 give Your Honor comfort that we are not doing what 362(b)(4)
4 was meant to address.

5 And in terms of deterrence, there's some cases
6 that address that and think about the police power verse
7 pecuniary interest or public interest verse pecuniary
8 interest with respect to deterrence. Your Honor, we've
9 already made significant changes. Again, the evidence is
10 clear on that and it's not controverted that we've made
11 changes to address whatever issues or the issues that have
12 been raised and, again, continuing to be subject to
13 regulatory impact of the Department of Transportation in the
14 United States and a bureau in Canada.

15 These are very much pecuniary interest and, like I
16 mentioned earlier, they are subject -- there is the
17 subjective test. So you have to kind of dig deep and look at
18 what's going on. And the San Francisco complaint and their
19 arguments fail under both tests in terms of the public policy
20 test and the pecuniary test. They are clearly pursuing
21 monetary claims.

22 Now, of course, like every other governmental unit
23 that's in a debate like this they dress up that argument in
24 other ways. They will cite to the statute. They will even
25 talk about their causes of action that are more than just

1 monetary and that they're trying to change our behavior. But
2 if you get to the facts of the situation here which is what
3 the Delaware jurisprudence requires that you do, you will
4 learn that what's really going on and if you take in the
5 evidence from the declarations, what's really going on here
6 they might have filed something under a broad statute, they
7 might have even pursued causes of action and asked for a
8 number of things, but what we have today and what we're
9 seeking to enjoin is mostly or entirely them pursuing
10 monetary damages, whether it's in the form of fines or
11 restitution.

12 And they have their rights under the claim
13 process. Now the claim process is going to go forward in
14 Canada. There's actually a hearing on June 19th with the
15 proposed claims bar date of July 30th, 2020. And they'll
16 have an opportunity to assert their rights just like every
17 other creditor, including governmental units in Canada or in
18 the United States. That's the right way for them to protect
19 their rights, not trying to jump in line, not disrupting our
20 restructuring and not putting us in a situation where a
21 successful restructuring is in jeopardy and a potential
22 liquidation is a potential situation.

23 We cite a number of cases from this jurisdiction
24 that support the relief we're requesting today. I think we
25 ably distinguish the cases that the City of San Francisco

1 cites. In general, those are cases that are outside of this
2 jurisdiction. They frequently have situations where the
3 relief -- the behavior is ongoing. And situations where
4 there's no another authority, like here the Department of
5 Transportation, that can protect the rights that the
6 litigation at issue was intended to protect.

7 And I think given the facts of this case, the
8 injunction that we're requesting is absolutely appropriate
9 and may ultimately be necessary to ensure a restructuring for
10 the betterment of all constituents as opposed to the City of
11 San Francisco being able to pursue its litigation for what
12 may be the betterment of the state of California and may
13 ultimately not even be in their interest.

14 Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Carmel.

16 Okay. Let me hear from counsel for the City of
17 San Francisco.

18 MR. TREDINNICK: Good afternoon, Your Honor. John
19 Carroll.

20 MR. CARROLL: Good afternoon, Your Honor. John
21 Carroll of Cozen O'Connor on behalf of the City of San
22 Francisco.

23 Your Honor, my colleague, Edward Tredinnick, who's
24 been admitted on a pro hac basis will be presenting the
25 argument today.

1 THE COURT: Thank you, Mr. Carroll.

2 MR. TREDINNICK: Thank you, Your Honor. Edward
3 Tredinnick of Greene Radovsky Maloney Share & Hennigh
4 appearing on behalf of the people of the State of California,
5 acting through and on behalf of the San Francisco City
6 attorney.

7 As pointed out by Mr. Carmel, the City and County
8 of San Francisco imitated this action under the Unfair
9 Competition Laws under the Unfair Competition Laws of the
10 State of California which provide for a city attorney to
11 bring an action on behalf of the people of the State of
12 California.

13 These actions have been determined, both under
14 California state law and in bankruptcy cases has to be an
15 exercise of police powers. They are essentially a law
16 enforcement action on behalf of the people of the State of
17 California.

18 I would like to address one issue with respect to
19 the request that the foreign representatives are making here
20 in that this is, as they point out, a Chapter 15 proceeding
21 and that they are entitled to the benefits of Section 1520
22 which gives them access to the automatic stay. We have no
23 quarrel with that.

24 However, the other provisions for an injunctive
25 relief under 105(a) runs into a bit of a problem for them

1 because Section 1521 of Chapter 15 provides that injunctive
2 relief may be made except as set forth in 1521(b) that the
3 court may not enjoin police or regulatory acts of
4 governmental units.

5 So using 105 to get something specified and as is
6 prohibited under 1521(d) runs into a problem that was
7 highlighted by the United States Supreme Court recently in
8 Law vs. Siegel that you can't get something under 105 that
9 is, otherwise, prohibited under the Bankruptcy Code.

10 The other main issue that I think the that the
11 foreign representative is trying to state is that this action
12 is not a police action. And the reason for that they rely on
13 is the demurrer that is set out which sets forth that this
14 action may be prohibited under a federal preemption theory.
15 And that only the Department of Transportation is able to
16 regulate an entity such as the debtors herein.

17 Obviously, my client takes issue with that, has
18 filed an extensive brief in that action in response to the
19 demurrer and that matter is set for a hearing two weeks from
20 today. We think it would be inappropriate for this court to
21 decide under a demurrer under California stat law with
22 respect to these issues. And the mere fact that just why here
23 it has a search that the preemption applies should not rule
24 the day.

25 THE COURT: Let me ask you a question, Mr.

1 Tredinnick.

2 MR. TREDINNICK: Yes.

3 THE COURT: If I recognize the foreign proceeding
4 under 1520, does the automatic stay apply automatically?
5 That's why they call it an automatic stay.

6 MR. TREDINNICK: Absolutely, Your Honor.

7 THE COURT: So what's the proper procedural
8 process for a state or regulatory agency that believes that
9 it is operating under its police and regulatory powers to
10 seek relief from that stay?

11 MR. TREDINNICK: Well in a normal case, it would
12 be a motion for relief from stay. Actually, not a motion
13 from a relief from stay but a motion for the determination
14 that the stay does not apply, in this instance, because the
15 entity is operating its police or regulatory powers. And
16 that's really the issue, I think, we have here today. And
17 that is that I believe this action is clearly within the
18 exception to the automatic stay for police and regulatory
19 actions. That at (indiscernible) is what this action is
20 about.

21 The foreign representative also makes a very -- an
22 argument that it has, you know, worked with the Department of
23 Transportation and it's willing to carve them out of the
24 injunction. I find that a little bit strange that the
25 regulated entity gets to decide who gets to regulate them.

1 And it's important to note that it was the people in the
2 State of California who initiated these investigations into
3 JustFly prior to the Department of Transportation being
4 involved.

5 There are issues of California law that impact the
6 people of the State of California in our action that the
7 Department of Transportation is not going to be interested
8 in. And so, this action is important to the people of
9 California who, quite obviously, is probably one of the
10 larger markets that JustFly was operating under.

11 We think it's important --

12 THE COURT: isn't it -- do you take any exception
13 to the evidence that they've introduced that in terms of the
14 injunctive relief that you are seeking in California that's
15 become moot because they've already agreed to do all those
16 things?

17 MR. TREDINNICK: Well they may have agreed to it
18 but they have not entered into any kind of binding obligation
19 that they would have if the State of California was able to
20 enter its injunction. We are not there yet.

21 They have, as pointed out, in the exhibit that
22 they have submitted which was a settlement communication
23 between one of the city attorneys and JustFly that there has
24 been discussion of modifications of their behavior. But
25 that's all it is at this point is a statement that they will

1 modify their behavior and whether or not that continues is
2 still of interest to the people of the State of California,
3 particularly since its, at least, according to the petition
4 the intent is for reorganization and a new entity of some
5 manner to come out and start doing business again, hopefully
6 when the pandemic lifts and we're back to normal travel
7 situation.

8 My clients concerned about that because we don't
9 know, at this point, without some sort of formal injunctive
10 relief that would be available under this litigation that's
11 pending that they would not just revert back to their prior
12 activities.

13 So, I don't think it solves the problem. The fact
14 that they are acting differently is commendable, but that
15 doesn't take away what had been a rather egregious course of
16 action that caused the initiation of this lawsuit in the
17 first place.

18 THE COURT: Okay.

19 MR. TREDINNICK: One point with respect to the
20 issue of comity. We recognize that Canada -- the Canadian
21 courts have entered their order and that they have a stay in
22 place. However, it's notable that the Canadian companies
23 Arrangement Act also has an exception for their regulatory
24 agent's bodies to continue their investigation and would not
25 be subject to any stay.

1 It would, I don't think comity would stretch as
2 far as to allow regulatory actions to continue in Canada and
3 prohibit them from continuing here in the United States. And
4 I don't think that Chapter 15 was designed to do.

5 THE COURT: Doesn't comity come into play and the
6 idea that, as you said, even the Canadian law, there's
7 prohibitions to prevent an entity or a governmental entity
8 from proceeding with that investigation. And the Canadian
9 Court has already entered an injunction, so why shouldn't I
10 just say, Go back to Canada and ask the Canadian judge to
11 lift it?

12 MR. TREDDINICK: Well, I would (indiscernible)
13 because I believe that stay doesn't apply to governmental
14 entities of the United States.

15 THE COURT: Well, it wouldn't, but as a matter of
16 comity, I can say, Look, I understand that Canada is going to
17 be the center of the main proceeding here. The action --
18 everything is going to be resolved in Canada, not here in the
19 United States.

20 Canada and its judge has determined that it's
21 appropriate at that point to enjoin everything in Canada
22 until the end of July. There are apparently proceedings that
23 are going to happen in June with a bar date in July.

24 So, why wouldn't it be appropriate for me to say,
25 I'm just going to allow the automatic stay to stay in place

1 until the end of July. You can go to Canada and talk to the
2 judge there and if they make the determination that it is a
3 regulatory action that is not subject to a stay in Canada,
4 get the relief there.

5 MR. TREDDINICK: Well, I just feel that that would
6 be more of an imposition upon United States entities to go
7 into Canada and I don't know that the provisions of
8 Chapter 15, which provide that courts within the United
9 States should not enjoin police or regulatory actions in a
10 Chapter 15, that Congress has taken that into account.

11 THE COURT: Well, you're still going to have to go
12 to Canada anyway, because even if this action continues here
13 and you're allowed to proceed with your lawsuit, you're not
14 going to be able to collect on it in the United States;
15 you're going to have to go to Canada.

16 MR. TREDDINICK: Agreed. And we are not taking
17 any kind of position that we would be able to enforce the
18 judgment, only that we would be able to continue with the
19 injunction to conclude the injunctive relief. And to the
20 extent that we can fix any penalty or restitution interest,
21 that that would have to go through Canada and we don't
22 dispute that.

23 THE COURT: Okay. I'm sorry to cut you off.
24 You add another point?

25 MR. TREDDINICK: Yeah. I would just like to

1 address the issues that have been raised in the reply
2 regarding the standards for the injunction. The W.R. Grace
3 case is instructive in a lot of ways in that -- and, again,
4 it was not a foreign proceeding, but in that instance, the
5 Court clearly stated that 362(b)(4) provides an exception for
6 fixing damages for violation of the police-power matters.
7 So, that was one of the rulings in the case and we cited that
8 case in our brief.

9 But as Mr. Carmel has stated, there was an
10 injunction that was imposed in that case; again, it was not a
11 Chapter 15 proceeding, but that was an instance where the
12 facts of that case were not like this at all. The case had
13 been going on for several years -- I think it was about eight
14 years when the New Jersey Department of Environmental
15 Protection wanted to go forward and establish some punitive
16 claims against the debtor.

17 However, the Department did not file a proof of
18 claim, so it was barred. So, there was going -- no matter
19 what recovery they got, they were not going to collect it, so
20 they were able to show that they were not going to succeed on
21 the merits and any action was not going to be of any use, and
22 that was the basis for which the Court issued the 105
23 injunction.

24 This case is much different. The idea that we are
25 not going to succeed on the merits is based on the statement

1 of the foreign representative that there's a demurrer on file
2 and we're going to lose and that San Francisco is not going
3 to be able to succeed on that.

4 As I mentioned, that's hotly disputed. We don't
5 believe we're going to lose and, actually, since it's a
6 demurrer, the more likely result is that we would probably
7 prevail on that issue.

8 The debtor has also set forth that he's going --
9 that they were going to suffer irreparable harm in their
10 reorganization issues, that they're going to have to deal
11 with these types of issues; however, they are saying they're
12 going to deal with the Department of Transportation. It's
13 not going to be any more costly to deal with the city of --
14 the People of the State of California on this, and I might
15 point out that just two days ago, the debtors have
16 substituted in new counsel in the California action to pursue
17 that litigation. So, it's not -- it would not appear that
18 they are unable to do -- to pursue that.

19 It is -- there would be irreparable harm to the
20 People of the State of California if they were not able to
21 continue to protect themselves under the consumer protection
22 laws that are set forth to protect California residents and
23 that interest would be the factor, I believe, would weigh
24 heavily in favor of the public interest of the People of the
25 State of California. So, in that instance, I don't believe

1 that any injunctive relief would be appropriate in this
2 action.

3 Again, I would point out, as Mr. Carmel has
4 mentioned, they have been willing to carve out the Department
5 of Transportation for purposes of the regulation, up to and
6 including any penalties that may be imposed, save the
7 enforcement of that judgment. And we don't understand and we
8 don't believe that the People of the State of California
9 should be treated any differently in this case.

10 Thank you, Your Honor. Unless you have any
11 questions, I will conclude.

12 THE COURT: Has there been any or has the People
13 of the State of California come to any conclusion as to the
14 amount of damages they're seeking to recover in this action?

15 MR. TREDDINICK: No, there have not, Your Honor.

16 As you may be aware, this action had -- was
17 initiated in September of last year. The demurrer was
18 briefed in December of last year.

19 And for reasons because of assignment of judges
20 and also issues that the state courts in California are
21 having with the pandemic, the matter was not set for hearing
22 until July 1st. So there has not been any determination
23 there.

24 We also had discovery requests that were made that
25 have not been complied with as of yet, so we're still in

1 early stages at this point.

2 THE COURT: Well, is it to say -- I did see in the
3 complaint that the amount of the fines that could be imposed
4 were \$2500 per debtor; is that right?

5 MR. TREDDINICK: I believe that's the case. I'm
6 not completely conversant with how that would be applied as
7 to the debtors.

8 THE COURT: I did see that in the prayer for
9 relief; it is \$2500 per debtor under two different theories.

10 MR. TREDDINICK: Yeah.

11 THE COURT: So, I'm assuming that the amount of
12 damages that are being sought to be able to provide
13 restitution to the people who purchased tickets through the
14 debtors would far exceed that amount.

15 MR. TREDDINICK: That would be accurate, Your
16 Honor.

17 THE COURT: Okay. Thank you.

18 Mr. Carmel?

19 MR. CARMEL: Your Honor, what I'd like to do with
20 Your Honor's permission is respond to the issues that you
21 discussed with the City of San Francisco and reserve what I
22 would view as kind of my closing until after we address the
23 issues so we can more closely align what I'm responding to
24 with the discussion that was just had between Your Honor and
25 the City's counsel.

1 Is that okay with Your Honor?

2 THE COURT: Yeah, go ahead.

3 MR. CARMEL: So, I want to go through each of
4 these issues and if I miss any, I'm happy to respond.

5 The first thing that the City's attorney talked
6 about was that the -- in the past, there are cases that
7 support the fact that the law that's at issue here is one
8 where the City was determined to be exercising its police and
9 regulatory power. In some ways that's completely irrelevant
10 partly because the courts that have made that determination
11 may have been using an objective test or an objective
12 standard where they look at the statute.

13 That's not what happens in Delaware; in Delaware
14 there's a subjective test and that subjective test looks at
15 actually the facts of the case as to what is relevant. And
16 in Delaware in the Third Circuit, there is plenty of law that
17 supports that. And when you look at the facts of this case,
18 they absolutely do not support that the City of San Francisco
19 is exercising police and regulatory power.

20 The second thing that the City's attorney
21 addressed was Section 1520 where he acknowledged that the
22 automatic stay is automatic upon Your Honor's recognizing
23 this case or these cases and then he cites to 1521. And a
24 comment them that I have is that the City of San Francisco's
25 position misses context and this argument absolutely misses

1 context and, in particular, is misquoting the statute.

2 If Your Honor looks at Section 1521, what it says
3 is that there are a bunch of rights that are automatic under
4 1520, upon the recognition of a bankruptcy and then 1521 says
5 there are some rights that are possibilities that you as a
6 bankruptcy judge can enter, including an injunction.

7 Under 1521, at the end of (d) -- or, sorry -- in
8 (d), it says an injunction under Section 1521 cannot, "enjoin
9 a police or regulatory act," and then at the end it says,
10 "under this section."

11 Your Honor will notice that our motions does not
12 ask for an injunction under 1521; our motion asks for an
13 injunction under 105 and you're absolutely entitled to enter
14 an injunction under Section 105 in a Chapter 15 because
15 Section 103 makes Chapter 1 applicable in a Chapter 15. So,
16 I think that's important and I think that's the kind of
17 skipping context that the City of San Francisco is doing here
18 to harm our debtor.

19 The third point they make is -- relates to the
20 demurrer and the fact that the City of San Francisco has a
21 response to the demurrer. Your Honor has a collection of
22 evidence in front of you. None of it provides any response
23 to our demurrer. I think that is relevant. There is no
24 response on the record, no information in front of you that
25 contests anything in the demurrer.

1 The only thing that you heard in terms of
2 evidence -- and this is a theme that you're going to hear
3 from me as we go through each of these points and as we get
4 to the closing -- the only evidence you have in front of you
5 was presented by the debtors; there's no evidence to suggest
6 that there's anything that contradicts the information in our
7 demurrer.

8 The fourth point is that -- about the proper
9 procedure and what was important in the answer that you heard
10 from the City of San Francisco is that they acknowledge, they
11 know exactly what type of relief we were requesting in our
12 motion for recognition. They engaged on this topic and they
13 presented the case before you, Your Honor, that they felt was
14 appropriate.

15 This is a serious issue for my client. As you can
16 see from the people who are participating in the hearing
17 today, as you can tell from the preparation, the declarations
18 we filed, the fact that we were ready to be before you, Your
19 Honor, with witnesses, this is serious. This is a question
20 of whether my client is able to restructure in bankruptcy or
21 if they end up liquidating.

22 And the City of San Francisco was well aware of
23 this. We filed our initial declarations on May 22nd when we
24 filed our motion and we filed a lengthy reply. And the City
25 of San Francisco knew exactly what we were doing. Their

1 objection that they filed was against the declaration --
2 sorry -- was against the injunction that we're seeking.

3 And to suggest that this isn't serious or that we
4 aren't entitled to the relief because the objection that they
5 filed, which just references that a statute may, in other can
6 cases, have been found to be police and regulatory powers, is
7 unfair to the debtors.

8 The fifth point is -- was related to a question
9 and I believe a colloquy about the fact that we're working
10 with the Department of Transportation and the fact that we
11 were willing to carve them out. There's nothing unusual
12 about the fact that we acknowledge the Federal Government has
13 authority to regulate our company. And there's nothing
14 unusual about the fact that we're allowing them, and indeed
15 take issue when they called us, in terms of allowing them to
16 continue to exercise their police and regulatory power.

17 There's nothing about my client that suggests
18 they're not willing to be regulated. The problem is my
19 client is not willing to be harassed and that's what's
20 happening from the City of San Francisco.

21 Your Honor, while the facts and the explanation
22 that the City's counsel mentioned was about the fact that
23 their complaint was filed first and they somehow clued in the
24 Department of Transportation to this issue, nothing could be
25 further from the truth and irrelevant; again, they are not

1 able to submit whatever, a meager amount of evidence they're
2 submitting by having a lawyer here. They have no facts to
3 support what they said.

4 And if you'd like, Your Honor, we could put
5 Christopher Cave on the stand right now and he would explain
6 to you that the Department of Transportation engaged with the
7 company in 2018. Forget about having looked at the
8 complaint; we've been talking to the Department of
9 Transportation for an extra year.

10 And we have engaged with them. We have engaged
11 with the regulatory agency in Canada and we happened to have
12 provided information to the City of San Francisco, because
13 while we don't believe they have any regulatory authority, we
14 also recognize that regulations are important and, Your
15 Honor, we intend to be following the regulations now and
16 we -- our entire purpose of a restructuring is to get out of
17 bankruptcy and continue to operate.

18 We recognize that to the extent regulatory
19 authorities have the right to regulate us, regardless of what
20 the automatic stay provides, regardless of what today's
21 injunction provides, we're certainly going to be in a
22 situation where we are able to be regulated post-getting out
23 of our restructuring. And so, we're not trying to skirt
24 regulations; we're trying to be regulated by the appropriate
25 people in an appropriate way.

1 The sixth point that was raised is that we've not
2 agreed to an injunction with the City of San Francisco, even
3 though there's, essentially, an acknowledgment that our
4 behavior was fixed. That acknowledgment comes in multiple
5 forms.

6 Number one, no one contested any of the evidence
7 that we presented before Your Honor today. The declaration
8 makes clear all the changes that we made to our behavior and
9 there was no one, not even a cross-examination. So it's not
10 a question of whether we were successful at convincing you;
11 there's no alternative, that's the only information that you
12 have before Your Honor.

13 What the City of San Francisco just argued was
14 they mentioned something about a settlement discussion which
15 we absolutely attached to our reply because we think it's
16 important. It's an acknowledgment from the City of San
17 Francisco that our behavior has changed and it's a statement
18 against interest.

19 Your Honor, but in addition to that, if that's not
20 sufficient, the testimony that we provided in our declaration
21 that Your Honor accepted today and that we're willing to put
22 on some more is available. There's no evidence to the
23 contrary.

24 And the fact that they essentially acknowledge and
25 maybe completely acknowledge that our behavior has changed,

1 but that they kind of wanted to be in an injunction so going
2 forward they feel more comfortable, that's not the way the
3 rules work. This is a monetary issue.

4 And, again, they will have their rights to
5 regulate any company that is restructured, and so we're not
6 trying to run away from the regulations here either, but we
7 are trying to take the resources we have, put them into our
8 restructuring, and do something that's for the betterment of
9 all creditors.

10 The next issue was the issue of comity and we
11 believe Your Honor has the right to enforce the Canadian
12 Court's laws, but to be clear, we are asking today for an
13 order that stops the City of San Francisco from pursuing
14 their action. We think it's appropriate. We think we've
15 provided plenty of support.

16 And what we don't want to be doing is spending a
17 bunch of time and energy dealing with this, and I'll get to
18 that point in a minute.

19 Your Honor, the next point was the fact that W.R.
20 Grace was not a foreign proceeding. That is true, but
21 irrelevant. Your Honor, what W.R. Grace stands for, as well
22 as Pintura, which is a Third Circuit case, both of them stand
23 for the proposition that Your Honor has the power to create
24 an injunction under Section 105 to prevent a governmental
25 unit from proceeding even when they have police and

1 regulatory power.

2 The fact that this is a Chapter 15 is not only not
3 relevant because you have the power under Section 103 to
4 enter an order under Section 105, but it's also, weakens
5 their argument, not strengthens it.

6 The point of a Chapter 15, and this goes with our
7 argument on comity, is to allow us to proceed in a bankruptcy
8 in a foreign jurisdiction. So, if anything, you should have
9 more leeway to enter the injunction that we're asking for,
10 but even if you don't buy the argument that you're
11 entitled -- you have (indiscernible) right, you certainly
12 have a road that's been paved by the Court in W.R. Grace and
13 Pintura and notes Third Circuit law.

14 The next thing is the point that somehow the fact
15 that we've -- that it's not more costly to deal with the City
16 of San Francisco if we're already dealing with the Department
17 of Transportation; again, no evidence to make this point,
18 nothing in the record, but, of course, it's not true.

19 You, yourself, would, of course, know, having
20 practiced, that dealing with two entities is always going to
21 be more expensive than dealing with one, but what's more
22 important here is the two entities that we're dealing with.

23 The City of San Francisco filed litigation back in
24 September and Your Honor has not seen us before this Court
25 asking for anything, any relief regarding the Department of

1 Transportation. Your Honor did not see us file for
2 provisional relief because we were nervous that the
3 Department of Transportation was threatening to pursue a
4 motion to compel.

5 But if you look at, I believe it's Docket
6 Number 17, where we filed a motion for provisional relief, we
7 included an email that explains what motivated us to file
8 that motion, which is that the City of San Francisco,
9 notwithstanding the fact that they knew that about 10 days
10 later or two weeks later, we'd be right before Your Honor
11 dealing with a stay, they were threatening to can compel
12 discovery.

13 This is a completely different animal. It's
14 especially unfortunate because it's an animal that doesn't
15 have the regulatory power, but even if they had the same
16 power as the Department of Transportation, it is more
17 extensive and more work for us to address them, and, again,
18 no evidence to the contrary.

19 The next point they raised is that there would be
20 irreparable harm to California if they're not able to protect
21 themselves. That was the entire statement.

22 There's zero -- that's actually not -- there's no
23 facts built into that statement, but even if there were,
24 there's no facts in the record that support that statement.

25 And then the final statement was that the public

1 interest weighs in favor of California; again, there's no
2 facts that support that, but in addition to that, there's no
3 facts in the record.

4 And, Your Honor, if you look at our
5 declarations -- we have witnesses here today -- we are ready
6 to move forward with our restructuring. I'm going to save my
7 closing, but the bottom line is there's nothing before you
8 that provides any facts or any reason for you to deny the
9 relief that we're requesting and enjoin us and allow us to
10 move on to all the different restructuring activities that we
11 highlight in the reply and that are supported by a
12 declaration.

13 THE COURT: Thank you, Mr. Carmel.

14 Does anyone else wish to be heard on the motion?

15 MR. CARROLL: Your Honor --

16 THE COURT: Yes?

17 MR. CARROLL: -- it's John Carroll. If I may be
18 heard for a moment?

19 THE COURT: Sure.

20 MR. CARROLL: Your Honor, it's interesting that
21 the debtor relies so heavily on procedure. And I would just
22 direct the Court's attention to Section 1520, indeed, upon
23 recognition, does activate the automatic stay, as has been
24 previously discussed, but as we all know, the automatic stay
25 contains certain exceptions, including 362(b)(4).

1 And I would just command to the Court's attention,
2 the latter half of (b) (4), which goes into what the police
3 and regulatory powers are, and the ability to continue to
4 pursue even monetary damages under 362(b) (4) under that
5 exception.

6 It was also addressed that, you know, don't look
7 at 1521; 1521, what it actually provides for is the type of
8 relief which the Court may give, right -- so it's not
9 mandatory; you may get it -- but it also does something else,
10 very importantly, it sets forth what you cannot do. And it
11 does expressly state that:

12 "The Court may not enjoin a police or regulatory
13 act of a governmental unit, including a criminal action or
14 proceeding, under this section."

15 So, yes, it does say, "under this section," so
16 once again, under 1520, you're not getting the full
17 injunctive relief because you have an exception under 362.
18 Under 1521, you're also not getting it. So, what they've
19 (indiscernible) is, okay, what we're going to do is we're
20 going to turn to 105.

21 Well, go ahead and turn to 105, but, procedurally,
22 you're inappropriate because you've got to go under 7001. It
23 should have been an adversary proceeding and you can't just
24 dismiss it (indiscernible) and say, Oh, it doesn't matter
25 that it's not an adversary proceeding, because you do need

1 discovery on those various issues as to whether or not and to
2 what extent this is a police and regulatory action. So, this
3 is a totally inappropriate extension of the authority under
4 Chapter 15 to put this injunction in place.

5 That's it, Your Honor.

6 THE COURT: Okay. Thank you.

7 Anyone else wish to be heard?

8 MR. CARMEL: Can I respond to that, Your Honor?

9 THE COURT: Very briefly.

10 MR. CARMEL: So, under the -- I think there were
11 it three points. The first one was citing 362(b)(4),
12 relating to the fact regarding monetary damages can be
13 pursued to some extent; again, we go back to the cites that
14 we put in, the precedent that we put in. Yes, there are
15 situations where monetary damages can be pursued. They can
16 never be collected but pursued.

17 But, again, in Delaware and in the Third Circuit,
18 the subjective test is relevant. We satisfied the subjective
19 test that they are pursuing pecuniary interests.

20 Again, 362 doesn't -- isn't the only thing that's
21 relevant; we're asking for an injunction under 105.

22 Again, the City's counsel kind of sidesteps what
23 Section 1521 says, which includes relevant language under
24 this section.

25 We're not asking for an injunction under that

1 section. We've been very clear: we're asking for an
2 injunction under 105.

3 And then the third thing is the idea that an
4 adversary proceeding is the right way to proceed here. We
5 believe there's sufficient evidence and the parties have
6 sufficiently engaged in this, that the motion that we filed
7 is absolutely appropriate, was filed four weeks ago, and has
8 given everyone enough time to deal with this.

9 But if Your Honor is not comfortable with that, I
10 would request that we get a 120-day or some sort of an
11 extension or injunction that we've requested and then we'll
12 file an adversary proceeding. I don't think we need to do
13 it. I don't think it's appropriate.

14 I think it's just the City of San Francisco
15 asking, grasping for another straw and another opportunity,
16 but at a minimum, we ask Your Honor to not allow us to walk
17 out of here without an injunction that gives us a breathing
18 spell and allows us to focus on our restructuring.

19 We think we've provided more than sufficient
20 evidence to get that permanently and for the City of San
21 Francisco to just file their claim and let us proceed.

22 Thank you, Your Honor.

23 THE COURT: All right. Thank you.

24 If there's nobody else, I don't need closings.
25 I'm ready to rule on this issue.

1 Procedurally, this isn't being pursued in a usual
2 fashion, let me say it that way. The motion by the debtors
3 is for recognition under 1520.

4 I find that they've met their burden of proof and
5 I do recognize the action under Section 1520. Section 1520
6 says, specifically, that once recognized, Section 362, among
7 others, the automatic stay applies to the action.

8 The objection filed by the City of San Francisco
9 or the People of California, however you want to recognize
10 it -- I'll just say the objectors -- the motion filed by the
11 objectors is, in substance, a motion to have the Court
12 recognize that the stay does not apply because they are
13 enforcing its police and regulatory powers under 362(d)(4).

14 The burden of proof on that issue is the
15 objector's. The movant had to show that it was, in fact,
16 pursuing its police and regulatory powers. The only proof
17 put on by the objector was a reference to the statute that
18 they had brought their action under in the State of
19 California.

20 As the debtors have pointed out, the Third Circuit
21 and this Court recognize a subjective standard for
22 determining whether or not 362(d)(4) applies, and in this
23 case, the only evidence that I have was put on by the
24 debtors, which shows that the relief actually being sought by
25 the City of San Francisco in the California action is

1 reimbursement of or damages to reimburse customers of the
2 debtors and that, in this Court's view, is a pecuniary
3 interest that is being pursued.

4 And because it is a pecuniary interest and not a
5 police and regulatory interest, I find that 362(d)(4)
6 exception to the automatic stay does not apply and,
7 therefore, the debtors have the benefit of a stay under 362.
8 And based on 362, I'll enjoin the City of San Francisco from
9 pursuing the action in the state of California at this time
10 until further relief of the Court.

11 And the debtors should confer with counsel for the
12 City and come up with an appropriate form of order and submit
13 it under --

14 MR. TREDDINICK: Thank you very much.

15 THE COURT: Okay. Any other questions?

16 (No verbal response)

17 THE COURT: Anything else for today?

18 (No verbal response)

19 THE COURT: All right. Thank you all very much.

20 We're adjourned.

21 COUNSEL: Thank you, Your Honor.

22 (Proceedings concluded at 3:13 p.m.)

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski
Mary Zajaczkowski, CET**D-531

June 19, 2020