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Proposed Counsel for Debtor
and Debtor in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re

HAWAIIAN AIRLINES, INC.,
a Hawaii corporation,

Debtor.

Case No. 03 - _____
(Chapter 11)

**MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTOR TO (A)
ASSUME CERTAIN EXECUTORY
CREDIT CARD AGREEMENTS AND (B)**

**UTILIZE CERTAIN NOTICE
PROCEDURES RELATING THERETO,
PURSUANT TO SECTION 365 OF THE
BANKRUPTCY CODE; PROPOSED
ORDER**

Date: March 21, 2003

Time:

Judge: Hon. Robert J. Faris

Hawaiian Airlines, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), by and through its undersigned proposed co-counsel, hereby moves the Court (the “Motion”) for entry of an order authorizing the Debtor to (A) assume certain executory credit card agreements and (B) utilize certain notice procedures relating thereto, pursuant to section 365 of the Bankruptcy Code. In support of the Motion, the Debtor respectfully represents as follows.

I. JURISDICTION

1. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 363, 365, 1107 and 1108 of title 11 of the United States Code.

II. BACKGROUND

4. On March 21, 2003 (the “Petition Date”), the Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor is operating its businesses and managing its properties as a debtor in possession. No trustee, examiner or committee of creditors has been appointed in the Debtor’s chapter 11 case.

5. The Debtor was incorporated in January of 1929 under the laws of the Territory of Hawaii and is currently a subsidiary of Hawaiian Holdings, Inc. (“Hawaiian Holdings”),¹ a Delaware corporation whose common stock is traded on the American Stock Exchange and Pacific Exchange under the ticker symbol “HA.” As part of the regular Securities and Exchange Commission filings of Hawaiian Holdings, Hawaiian Holdings reports its financial and operating results with those of the Debtor on a consolidated basis.

The Debtor’s Business

6. The Debtor is engaged primarily in the scheduled transportation of passengers, cargo and mail. The Debtor’s passenger airline business is its chief

¹ Hawaiian Holdings holds 49.1% of the outstanding common stock of the Debtor directly. The remaining 50.9% of the outstanding common stock of the Debtor is held by AIP, Inc. (“AIP”), a wholly-owned subsidiary of Hawaiian Holdings.

source of revenue. Principally all of the Debtor's flights either originate or end in the state of Hawaii. The Debtor provides passenger and cargo service from Hawaii, predominately Honolulu, to the cities of Los Angeles, Ontario, Sacramento, San Diego and San Francisco, California; Seattle, Washington; Portland, Oregon; Phoenix, Arizona; and Las Vegas, Nevada (the "Transpacific Routes"). The Debtor also provides non-stop service between and among the six major islands of the state of Hawaii (the "Interisland Routes") and weekly service to each of Pago Pago, American Samoa and Pepeeete, Tahiti in the South Pacific (the "South Pacific Routes"). Charter service is provided from Honolulu to Anchorage, Alaska (the "Charter Routes"). Based upon the Debtor's operating revenues, the Debtor is the largest airline headquartered in Hawaii.

7. Based on its unaudited results, the Debtor had a net loss of approximately \$58 million for the twelve months ended December 31, 2002 ("Year 2002") on operating revenue of approximately \$632 million for the same period. In comparison, for the twelve months ended December 31, 2001 ("Year 2001"), the Debtor reported net income of approximately \$5 million on operating revenue of approximately \$612 million for the same period. The Debtor's assets and liabilities, as of December 31, 2002, were approximately \$256 million and \$399 million, respectively. The Debtor's reported assets and liabilities, as of December 31, 2001, were approximately \$305 million and \$327 million, respectively.

8. The Debtor is party to a network of agreements among airlines.

Because of the interdependent nature of airline operations, coordination among airlines, provision of airline services, and efficient service by the airline industry to the traveling public, in general, would be virtually impossible without such agreements. Among other things, these agreements facilitate cooperation among airlines with respect to such critical activities as making reservations and transferring passengers, packages, baggage and mail among airlines.

The Debtor's Fleet

9. Beginning in the fourth quarter of 1999, the Debtor initiated a plan to replace its entire fleet of McDonnell Douglas DC-9 aircraft used to service its Interisland Routes. This effort was completed in the first quarter of 2002, with the Debtor taking delivery of thirteen Boeing 717-200 aircraft (the "717 Aircraft").

10. Similarly, in the fourth quarter of 2001, the Debtor initiated a plan to replace, by June 2003, its entire fleet of McDonnell Douglas DC-10 aircraft (the "DC-10 Aircraft") used to service the Transpacific Routes, South Pacific Routes and Charter Routes (the "Overseas Routes") with sixteen Boeing 767-300ER aircraft (the "767 Aircraft"). To date, the Debtor has taken delivery of ten new and four used Boeing 767-300ER aircraft and has returned eleven DC-10 Aircraft leased from Continental Airlines, Inc. and a subsidiary of American Airlines, Inc

("American"). The Overseas Routes are currently serviced by fourteen Boeing 767-300ER aircraft.

11. All of the Debtor's aircraft are leased from various lessors under either financing or operating leases. Three of the Debtor's 767 Aircraft are leased under fifteen-year operating leases with a subsidiary of Ansett Worldwide Aviation Services, Inc. ("Ansett") and were delivered to the Debtor in the fourth quarter of 2001. Four 767 Aircraft were delivered in 2002 under seven-year operating leases with International Lease Finance Corporation. Seven of the Debtor's 767 Aircraft are leased under eighteen-year operating leases from Ansett and a subsidiary of Boeing Capital Corporation ("Boeing"). Each of the 717 Aircraft is leased under an eighteen-year leveraged financing lease with Boeing. The Debtor's four remaining DC-10 Aircraft are leased under operating leases with American and B.C.I. Leasing.

Employees

12. The Debtor has approximately 3,200 active employees, approximately 2,600 of which are employed on a full time basis. The majority of the Debtor's employees are covered by labor agreements with the International Association of Machinists and Aerospace Workers (AFL-CIO) ("IAM"); the Airline Pilots Association, International ("ALPA"); the Association of Flight Attendants ("AFA"); the Transport Workers Union ("TWU"); or the Employees of the

Communications Section (“Communications Section”). Each of these labor agreements, other than the contract with the seven-member Communications Section, was renegotiated in 2000 or 2001, and will be subject to renegotiation again in 2004 or 2005.

Previous Restructurings

13. On September 21, 1993, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court (the “1993 Bankruptcy”).² Following confirmation of the Debtor’s plan of reorganization in the 1993 Bankruptcy on August 30, 1994, the Debtor successfully emerged from the 1993 Bankruptcy. Thereafter, on August 29, 2002, the Debtor was restructured from a public company into a wholly-owned subsidiary of Hawaiian Holdings and AIP (the “Restructuring”). As part of the Restructuring, the stockholders of the Debtor became stockholders of Hawaiian Holdings and Hawaiian Holdings assumed sponsorship of the Debtor’s existing stock agreements. Prior to the Restructuring, the common stock of the Debtor was publicly traded on the American Stock Exchange and Pacific Exchange under Hawaiian Holdings’ ticker symbol of “HA.”

² United States Bankruptcy Court, District of Hawaii, Case No. 93-01074.

The Debtor's Current Financial Crisis

14. The Debtor's current financial crisis was precipitated by a confluence of factors relating, in large part, to the depressed economic conditions of both the United States and Japan. These factors include: (a) decreased fare revenue, (b) high aircraft lease costs, (c) high labor costs and (d) increased insurance, security and fuel costs. Although the terrorist attacks of September 11, 2001 are one of the most obvious and publicized reasons for the Debtor's current financial crisis, it is the significant, though related, decline in the economies of the United States and Japan that has most contributed to the necessity of the Debtor's chapter 11 filing.

15. Following the events of September 11, 2001, the Debtor has seen a marked and dramatic reduction in the demand for travel to and within the islands of Hawaii. This reduced demand has been exacerbated by the flagging economies of the United States and Japan since that time. The demand for vacation travel, which historically has been the Debtor's greatest source of income, has been most affected by the economic decline. In order to attract passengers, airlines, including the Debtor, have been forced to lower their fares. The introduction of "low cost carriers," such as Jet Blue, has led to a further reduction in fare structure, as national airlines have been forced to reduce ticket prices to remain competitive. The combination of fewer ticket sales made at reduced fares continues to impact the Debtor's revenue and earnings negatively.

16. Beginning in late 1999, as discussed above, the Debtor began a refueling process under which its aging fleet of McDonnell Douglas DC-9 aircraft and DC-10 Aircraft would be completely replaced by the end of 2003. By July of 2001, the Debtor had entered into the last of its agreements with lessors that would provide the aircraft for this refueling. Although the terms of these agreements were considered to be fair and at market rates when agreed to, the subsequent and unforeseen decline in economic conditions in the United States and abroad have caused the terms of such leases to be highly unfavorable. Because its aircraft lease costs are grounded in economic assumptions that have failed to materialize, the Debtor has been forced to shoulder the crippling costs of over-market leases. For the Year 2002, expenses associated with the Debtor's aircraft leases made up 12% of its total operating expenses.

17. Similarly, because the Debtor's union agreements were renegotiated in 2000 and 2001, the Debtor's labor costs have not been in line with current economic conditions. Based upon market assumptions made in 2000 and pre-September 11, 2001, the Debtor's labor costs have exceeded what the Debtor could realistically maintain based upon its revenues. This relative increase in labor costs, as compared to revenue, has negatively impacted the Debtor's ability to remain a viable enterprise. For the Year 2002, the Debtor's labor costs made up 30% of its total operating expenses.

18. As a direct result of the events of September 11, 2001 and the long-standing international crises in the Middle East, the Debtor has seen increases in several of its cost centers. For instance, insurance rates associated with airline operations have increased substantially as compared to pre-September 11, 2001 rates. Because of increased airline security requirements, the Debtor also has been faced with increased security expenditures. Moreover, fuel costs, which made up approximately 14% of the Debtor's operating expenses for Year 2002, also have steadily increased during this period. These increased costs, in the face of declining revenues, have further weakened the Debtor's ability to succeed as a going-concern.

Prepetition Activities

19. The two largest controllable components of the Debtor's cost structure are labor and aircraft costs. These are, therefore, the two areas upon which the Debtor had focused prior to the Petition Date in trying to accomplish a successful out-of-court financial and operational restructuring. To that end, the Debtor has, particularly within the past year, been actively negotiating with both its aircraft lessors and labor unions to reduce its aircraft and labor costs, respectively. These negotiations have continued up until the Debtor's bankruptcy filing. On February 20, 2003, the Debtor's employees represented by IAM agreed to \$3.8 million in concessions. On March 6, 2003, the Debtor's employees represented by ALPA

reached an agreement with the Debtor with respect to approximately \$8 million in concessions. Similarly, on March 11, 2003, the Debtor's employees represented by AFA agreed to approximately \$3.5 million in concessions. Although the Debtor and its labor unions have made great progress in these negotiations, it now appears that the only practicable way for the Debtor to reorganize is under the protection afforded to it under the Bankruptcy Code, as the Debtor has not been successful in its attempts to negotiate significant concessions from its aircraft lessors.

III. The Debtor's Credit Card Agreements

20. Credit card sales represent a very substantial source of the Debtor's revenues. For example, during the year ended December 31, 2002, the Debtor generated approximately \$249 million of its total of approximately \$528 million in revenue from the sale of airline tickets purchased with credit cards.³

Approximately 37% of credit card charges originated at travel agencies. The other 63% of credit card charges were created through ticketing at the Debtor's sales outlets at airports and city ticket counters, by mail and telephone, and through the Internet.

21. Pursuant to certain agreements more fully described herein (the "Credit Card Agreements"), consumers may purchase airline tickets from the

³ The remaining \$279 million in revenue is generated by other methods including, but not limited to, cash sales, sales on accounts and sales through interline tickets.

Debtor using credit cards issued by American Express, Discover, Diners Club, JCBI, MasterCard, and VISA, as well as their respective subsidiaries, affiliates, and licensees authorized to issue such credit cards (collectively, the “Credit Card Companies”). Each of the Credit Card Agreements specifies a discount rate - essentially a processing fee - that reduces the amount of credit card receivables that are paid by the respective Credit Card Companies to the Debtor. These discount rates are highly confidential and vary depending on the Credit Card Company, the type of charge, and the manner of processing. These discount rates are subject to additional adjustments specified in the relevant Credit Card Agreement. Each Credit Card Company, moreover, has different contractual terms pursuant to which it pays the Debtor for ticketed charges.

A. MasterCard/VISA

22. The Debtor accepts both MasterCard and VISA (collectively, “Mastercard/VISA”) pursuant to an Agreement, as amended, between the Debtor and U.S. Bank National Association (“U.S. Bank”) (the “MasterCard/VISA Agreement”). Approximately 72% of the Debtor’s tickets purchased with credit cards are paid for with MasterCard/VISA cards.

23. Under the MasterCard/VISA Agreement, MasterCard/VISA cardholders may use their cards to purchase the Debtor’s airline tickets and/or other related services. MasterCard/VISA cardholders also may purchase tickets for

travel on other airlines in conjunction with tickets issued by the Debtor, consistent with airline industry interlining arrangements. The Debtor is obligated to submit to U.S. Bank all electronic or paper records evidencing all charge purchases that have been made within a certain period of time under the MasterCard/VISA Agreement (the “MasterCard/VISA Sales Records”). U.S. Bank pays the Debtor for all MasterCard/VISA Sales Records submitted in accordance with the MasterCard/VISA Agreement.

24. There are no cash refunds given in connection with MasterCard/VISA purchases, except as required by law. Instead, the Debtor processes a credit transaction and submits an electronic or paper record evidencing all credit transactions that have been made within a certain period of time under the MasterCard/VISA Agreement (the “Mastercard/VISA Credit Records”). U.S. Bank adjusts payments made to the Debtor based upon the MasterCard/VISA Sales Records and Credit Records submitted. During the year ended December 31, 2002, MasterCard/VISA refunds represented less than 1% of the Debtor’s total gross sales.

B. American Express

25. The Debtor’s relationship with American Express Travel Related Services Company, Inc. (“American Express”) is governed by an Airline Card Service Agreement (the “Amex Agreement”), by and between American Express

and the Debtor. The Amex Agreement became effective as of May 24, 1995, and remains effective until cancelled or terminated pursuant to the terms of the Amex Agreement. Approximately 21% of the Debtor's tickets purchased with credit cards are paid for with American Express cards.

26. Under the Amex Agreement, the Debtor permits American Express cardmembers to use their American Express cards to purchase airline tickets and/or other travel-related services on a current or extended payment basis. The Debtor also accepts American Express cards in payment for tickets for travel on other airlines purchased in conjunction with tickets issued by the Debtor, consistent with airline industry interlining arrangements. The Debtor then submits all charges to American Express.

27. American Express pays the Debtor for all charges prepared and submitted in accordance with the Amex Agreement, subject to a discount rate provided in the Amex Agreement. American Express then bills its cardmembers for their respective purchases. American Express is entitled to reimbursement from the Debtor, in accordance with the Amex Agreement, for certain payments by American Express to the Debtor on account of certain disputed or erroneous charges.

28. Tickets issued in connection with sales to American Express cardmembers are not refundable in cash, except as may be required by law, but

instead are treated as a credit to those cardmembers' accounts by American Express upon its receipt of certain credit slip forms from the Debtor detailing the refunded amount. During the year ended December 31, 2002, American Express refunds represented less than 1% of the Debtor's total gross sales.

C. Discover Card

29. The Debtor accepts the Discover Card pursuant to a Merchant Services Airline Agreement, dated February 9, 1995 (the "Discover Agreement"), by and between the Debtor and Novus Services, Inc. ("Novus").⁴ The Discover Agreement remains in effect until terminated in accordance with its terms. Approximately 3% of the Debtor's tickets purchased with credit cards are paid for with the Discover Card.

30. Under the Discover Agreement, Discover Card cardholders may use their cards to purchase the Debtor's airline tickets and related services. Discover Card cardholders also may purchase tickets for travel on other airlines in conjunction with the Debtor's tickets, consistent with airline industry interlining arrangements.

⁴ On August 1, 1991, the original party to the Discover Agreement, Discover Card Services, Inc. ("DCS"), merged with a corporate affiliate to form Novus, and the Discover Agreement was assigned to Novus, who assumed DCS's rights and obligations under the Discover Agreement.

31. Novus is obligated to pay the Debtor for all charge purchases submitted in accordance with the Discover Agreement. Novus then makes collections from Discover Card cardholders for their respective purchases.

32. Discover Card purchases are not refundable in cash, except as may be required by law, but instead are treated as a credit to the Discover Card cardholders' accounts. The Debtor is obligated to prepare and submit all credit slips to Novus within a certain period of time after Discover Card transactions are made in accordance with the Discover Agreement. During the year ended December 31, 2002, Novus refunds represented less than 1% of the Debtor's total gross sales.

D. Diners Club International

33. The Debtor accepts Diners Club International ("Diners Club") pursuant to a Diners Club Establishment Application and Agreement by and between the Debtor and Diners Club, dated July 31, 1990 (the "Diners Club Agreement"). The Diners Club Agreement is effective until either the Debtor or Diners Club terminates the agreement or the Debtor defaults in accordance with the terms of the Diners Club Agreement. Approximately 1% of the Debtor's tickets purchased with credit cards are paid for with Diners Club cards.

34. Under the Diners Club Agreement, Diners Club cardholders may use their cards to purchase the Debtor's airline tickets and/or other related services.

The Debtor is obligated to sell and Diners Club is obligated to purchase all valid charges that have been made within a certain period of time under the Diners Club Agreement (the "Valid Charges"). Diners Club pays the Debtor for all Valid Charges, less a certain discount rate, submitted in accordance with the Diners Club Agreement.

35. Pursuant to the Debtor's policy, tickets issued in connection with sales to Diners Club cardmembers are not refundable in cash, except as may be required by law, but instead are treated as a credit to those cardmembers' accounts by Diners Club upon its receipt of certain credit slip forms from the Debtor detailing the refunded amount. During the year ended December 31, 2002, Diners Club refunds represented less than 1% of the Debtor's total gross sales.

E. JCB International

36. The Debtor accepts JCB International ("JCBI") pursuant to a JCBI Merchant Agreement, as amended between the Debtor and JCBI (the "JCBI Agreement,"). The JCBI Agreement is effective until either the Debtor or JCBI defaults or terminates the agreement in accordance with the terms of the JCBI Agreement. Less than 1% of the Debtor's tickets purchased with credit cards are paid for with JCBI cards.

37. Under the JCBI Agreement, JCBI cardholders may use their cards to purchase the Debtor's airline tickets and/or other related services. The Debtor then

submits to JCBI all sales invoices evidencing all charge purchases that have been made within a certain period of time under the JCBI Agreement (the “Charge Forms”). JCBI pays the Debtor, at a discounted rate, for all Charge Forms submitted in accordance with the JCBI Agreement.

38. Tickets issued in connection with sales to JCBI cardmembers are not refundable in cash, except as may be required by law, but instead are treated as a credit to those cardmembers’ accounts by JCBI upon its receipt of certain credit slip forms from the Debtor detailing the refunded amount. During the year ended December 31, 2002, JCBI refunds represented less than 1% of the Debtor’s total gross sales.

II. RELIEF REQUESTED

39. The Debtor intends, with Bankruptcy Court approval of this and other related motions, to continue flights and transportation services in the ordinary course of business during the pendency of this chapter 11 case. Because credit card sales facilitate such a significant portion of the Debtor’s sales, it is absolutely vital that the Debtor be authorized to continue accepting credit cards from the traveling public for the purchase of the Debtor’s tickets.

40. By this Motion, pursuant to sections 363 and 365 of the Bankruptcy Code, the Debtor seeks entry of an order, substantially in the form attached hereto (the “Credit Card Assumption Order”), authorizing the Debtor to assume the Credit

Card Agreements, effective as of the entry of the Credit Card Assumption Order (the “Effective Date”).

41. The Debtor seeks this Court’s approval of the following procedures (the “Credit Card Assumption Procedures”) relating to the entry of the Credit Card Assumption Order:

(a) Within three business days of the Effective Date, the Debtor shall serve the Motion and the Credit Card Assumption Order, via overnight delivery service, on each of the Credit Card Companies. (Because the Debtor filed this Motion on the Petition Date, it was unable to give the Credit Card Companies prior notice pursuant to Bankruptcy Rules 6006 and 9014.⁵)

(b) To satisfy the notice and hearing requirements of Bankruptcy Rule 9014, should any Credit Card Company object to the Debtor’s proposed assumption of the Credit Card Agreement to which it is a party, such objecting Credit Card Company must file and serve a written objection and notice of hearing so that such objection and notice is filed with this Court and is actually received by the following parties (collectively, the “Notice Parties”) no later than twenty (20) days after the Effective Date:

The Office of the United States Trustee
1132 Bishop Street, Room 602
Honolulu, Hawaii 96813

Ms. Christine R. Deister
Hawaiian Airlines, Inc.
3375 Koapaka Street, Suite G-350
Honolulu, Hawaii 96819

Lisa G. Beckerman, Esq.
Akin Gump Strauss Hauer & Feld LLP
590 Madison Avenue

David P. Simonds, Esq.
Akin Gump Strauss Hauer & Feld LLP
2029 Century Park East, Suite 2400

⁵ A proceeding to approve assumption of an executory contract is a contested matter requiring reasonable notice and opportunity for hearing. *See* Bankruptcy Rule 6006(a) (“A proceeding to assume, reject, or assign an executory contract . . . is governed by Rule 9014.”); Fed. R. Bankr. P. 9014 (“In a contested matter in a case under the [Bankruptcy] Code not otherwise governed by these rules, relief shall be requested by the motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.”).

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Honolulu, Hawaii 96813

(c) If no objection is timely filed, the Debtor proposes that the Credit Card Assumption Order automatically become final.

(d) If an objection to the Motion is timely filed by a Credit Card Company with respect to the Credit Card Agreement to which it is a party, the Debtor shall schedule a hearing to consider the objection only with respect to the assumption of the Credit Card Agreement to which an objection is properly filed and served. If such objection is overruled or withdrawn at that time, the Credit Card Assumption Order shall automatically be deemed final as of the Effective Date.

42. The Credit Card Assumption Procedures are fully consistent with due process and the strictures of Rule 9014 of the Federal Rules of Bankruptcy Procedures. *See A.H. Robins Co. v. Piccinin (In re A.H. Robins Co.)* 788 F.2d 994, 1015 (4th Cir.), *cert. denied*, 479 U.S. 876, 107 S. Ct. 251, 93 L. Ed.2d 177 (1986) (holding that a conditional order procedure in contested matters satisfies notice requirements of both constitutional due process and Bankruptcy Rule 9014); *Banc Am. Commercial Corp. v. Northern Ill. Gas Co. (In re NRen Corp.)*, 79 B.R. 730, 732 (Bankr. S.D. Ohio 1987) (explaining function and purpose of conditional orders in contested matters and overruling objection to conditional order approving distribution of proceeds of asset sale); *see also* 11 U.S.C. § 105(a) (authorizing

court to enter “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]”).

43. This District has granted similar relief to the relief requested herein concerning a credit card agreements substantially similar to the Credit Card Agreements described herein. *See In re HAL, Inc.*, Case No. 93-01072 (Bankr. D. Haw. Oct. 1, 1993) (Order Authorizing Hawaiian Airlines to Assume Agreement, as Amended, between Hawaiian Airlines and American Express Travel Related Services Company, Inc.). In addition, other courts also have granted similar relief. *See In re UAL Corporation*, Case No. 02-B-48191 (Bankr. N.D. Ill. December 10, 2002) (Order Authorizing the Debtors to Assume Certain Executory Credit Card Agreements Pursuant to Section 365(a) of the Bankruptcy Code); *see also In re US Airways Group, Inc.*, Case No. 02-83984 (Bankr. E.D. Va. November 7, 2002) (Order Pursuant to sections 363 and 365(a) of the Bankruptcy Code Authorizing the Assumption of That Certain Charge Card Processing and Security Agreement, As Modified, By and Among National Processing Company, National City Bank of Kentucky and US Airways, Inc.); *In re Trans World Airlines, Inc.*, Case No. 01-0056 (Bankr. D. Del. Jan. 10, 2001) (Interim Order Authorizing the Honoring of Certain Executory Credit Card Agreements and Certain Notice Procedures Relating Thereto); *In re Trans World Airlines, Inc.*, Case No. 95-43748-399 (Bankr. E.D. Mo. July 3, 1995) (Order Pursuant to Section 365(a) of the Bankruptcy Code

Authorizing the Assumption of Certain Credit Card Agreements); *see also In re Continental Airlines, Inc.*, Case Nos. 90-932, 90-974, and 90-975 (Bankr. D. Del. Dec. 5, 1990) (directing performance of credit card merchant agreement and granting other relief).

IV. BASIS FOR RELIEF REQUESTED

44. Under Section 365(a) of the Bankruptcy Code, a debtor, “subject to the court’s approval, may assume or reject an executory contract or unexpired lease.” 11 U.S.C. § 365(a); *see also In re Hawaii Dimensions, Inc.*, 39 B.R. 606 (Bankr. D. Haw. 1984). An executory contract is one where “the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other.” *See In re Robert L. Helms Constr.*, 139 F.3d 702, 705 (9th Cir. 1998) (quoting from *In re Wegner*, 839 F.2d 533, 536 (9th Cir. 1988); *See also In re Select-A-Seat Corp.*, 625 F.2d 290, 292 (9th Cir. 1980).

45. In the case of the Credit Card Agreements, there are unperformed continuing obligations for both the Debtor and the Credit Card Companies. For example, the Debtor is under a continuing obligation to honor ticket purchases made by credit card holders. The Credit Card Companies, on the other hand, must pay the Debtor for all credit card charges submitted by the Debtor in accordance with the respective Credit Card Agreement. As such, the Credit Card Agreements

constitute executory contracts assumable under section 365 of the Bankruptcy Code. *In re Thomas B. Hamilton Co., Inc.*, 969 F.2d 1013, 1020-22 (11th Cir. 1992).

46. The assumption or rejection of an executory contract by a debtor in possession is subject to review under the business judgment standard. If such business judgment has been reasonably exercised, the Court should approve the proposed assumption or rejection. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *see also In re G.I. Indus.*, 204 F.3d 1276 (9th Cir. 1999) (the decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor); *In re Minges*, 602 F.2d 38, 42 (2d Cir. 1979).

47. In the Debtor’s business judgment, it is in the best interests of the Debtor and its estate for the Debtor to assume the Credit Card Agreements. The Debtor intends to continue flights and transportation services in the ordinary course of business during the pendency of this chapter 11 case in order to preserve consumer confidence. To do so, assumption of the Credit Card Agreements is vital. As the largest source of the Debtor’s revenue, credit card sales are an absolutely essential component of the Debtor’s business. The Debtor believes that, after the assumption of the Credit Card Agreements, ticket revenues should remain at or above prepetition levels and ticket returns (in the wake of the Debtor’s

chapter 11 filing) should be kept to a minimum. It will be impossible for the Debtor to reorganize if the revenues that it regularly receives from the Credit Card Companies as a result of credit card sales for tickets and other services are withheld by the Credit Card Companies upon the commencement of this chapter 11 case. In short, the refusal of the Credit Card Companies to continue operating under the terms of the Credit Card Agreements would be fatal to the Debtor's operations and reorganization efforts.

48. The Credit Card Agreements for the most part impose non-financial obligations that are insignificant in comparison to the amount of the Debtor's annual ticket sales pursuant to credit cards. The Debtor's most important obligations under the Credit Card Agreements are to provide the Credit Card Companies with information regarding charge purchases. The Credit Card Agreements constitute a substantial benefit to the Debtor's estate because, among other things, they result in revenues that are not offset by financial or other significant obligations.

49. Accordingly, because the Debtor's business depends so heavily on the Credit Card Agreements for success and because the Debtor expects to generate significant postpetition revenues for its estate as a result of the Credit Card Agreements, the Debtor submits that the assumption of the Credit Card Agreements is in the best interests of the Debtor, its estate, and its creditors.

50. The Debtor has satisfied the other requirements of section 365 of the Bankruptcy Code. Specifically, the Debtor proposes to cure all defaults under the Credit Card Agreements, if any, through the continued performance and payment of amounts due under such Agreements in the ordinary course of business. See 11 U.S.C. § 365(b)(1)(A). Furthermore, there is an adequate assurance of future performance under section 365(b)(1)(C) of the Bankruptcy Code because of the essential nature of the Credit Card Agreements.

V. NOTICE

51. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for District of Hawaii; (ii) parties appearing on the Debtor's list of creditors holding the twenty largest unsecured claims; (iii) the Securities and Exchange Commission; and (iv) the Internal Revenue Service. Given the circumstances, the Debtor submits that no other or further notice need be given.

VI. NO PRIOR REQUEST

52. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (a) authorizing the Debtor to assume the Credit Card agreements, (b) authorizing the Debtor to utilize certain notice procedures relating thereto as

specified in this motion, and (c) granting such other and further relief as this Court may deem just and proper.

Dated: Honolulu, Hawaii, March 21, 2003

By: Nicholas C. Dreher
NICHOLAS C. DREHER, ESQ.
THEODORE D.C. YOUNG, ESQ.
CADES SCHUTTE LLC

and

LISA G. BECKERMAN, ESQ.
DAVID SIMONDS, ESQ.
AKIN GUMP STRAUSS HAUER & FELD LLP

Proposed Counsel for Debtor and Debtor in
Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re) **Case No. 03 -**
) (Chapter 11)
HAWAIIAN AIRLINES, INC.,)
a Hawaii corporation,) **ORDER AUTHORIZING THE DEBTORS**
) **TO ASSUME CERTAIN EXECUTORY**
Debtor.) **CREDIT CARD AGREEMENTS**
) **PURSUANT TO SECTION 365(A) OF THE**
) **BANKRUPTCY CODE**
)
)
) Date: March 21, 2003
) Time:
) Judge: Hon. Robert J. Faris
)
_____)

Upon consideration of the Motion for entry of an Order Authorizing the Debtor to (A) Assume Certain Executory Credit Card Agreements and (B) Utilize Certain Notice Procedures Relating Thereto, Pursuant to Section 365 of the Bankruptcy Code (the “Motion”),¹ filed by Hawaiian Airlines, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”); and it appearing that notice of the Motion was appropriate and no further notice of the relief requested in the Motion is required; and upon consideration of the evidence presented to the Court in support of the Motion; and after due deliberation; and

¹ All capitalized terms not defined herein shall be as defined in the Motion.

sufficient cause appearing therefor; the Court is of the opinion that the Motion is well-founded and should be granted in all respects.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted in its entirety.
2. The Credit Card Assumption Procedures are approved.
3. The Debtor's business judgment to assume and ratify the Credit Card Agreements is reasonable and appropriate, and the assumption and ratification of such agreements is hereby approved, and any prepetition or postpetition transfers made pursuant to such agreements are ratified.
4. The Debtor is authorized to take any and all actions necessary or desirable to perform their obligations and the transactions contemplated under the Credit Card Agreements, pending this Order becoming final (as provided in paragraph 7 of this Order).
5. The Debtor shall cure any defaults under the Credit Card Agreements, including curing any outstanding amounts related to prepetition chargebacks, credits or fees, by continuing to operate in the ordinary course of business (which ordinary course operations include the setoff or recoupment of the foregoing items against incoming sales receipts) under the terms of each such Agreement.

6. Prior to twenty (20) days after the entry of this Order (the “Effective Date”), the affected Credit Card Company may file with the Court and serve on the Notice Parties, an objection and notice of hearing, which shall be scheduled by the Debtor for hearing on the next scheduled omnibus hearing date that provides not less than 10 (ten) days’ notice of such objection; provided, however, that each Credit Card Company shall only have the right to object to the entry of this Order with respect to the Credit Card Agreement to which it is a party.

7. If no objection is filed within such twenty (20) day period, this Order shall become final without further order of this Court. This Order shall remain in effect notwithstanding any objection until further order of this Court, and any modification or vacation of this Order shall not impair any action taken pursuant to it prior to its modification or vacation.

8. A copy of the Motion and this Order shall be served on each of the Credit Card Companies, by overnight courier, within three business days of the Effective Date.

9. Notwithstanding the possible applicability of Bankruptcy Rules 7062, 9014 or otherwise, this Order shall take effect immediately upon entry.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

11. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

Dated: Honolulu, Hawaii, _____, 2003.

UNITED STATES BANKRUPTCY JUDGE

In re Hawaiian Airlines, Inc., Chapter 11, Case No. 03-_____;
ORDER AUTHORIZING THE DEBTORS TO ASSUME CERTAIN
EXECUTORY CREDIT CARD AGREEMENTS PURSUANT TO SECTION
365(a) OF THE BANKRUPTCY CODE