

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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| BANCO SANTANDER (BRASIL), S.A., | : | |
| | : | No. 20-cv-3098 |
| Plaintiff, | : | |
| | : | COMPLAINT |
| v. | : | |
| | : | |
| AMERICAN AIRLINES, INC., | : | |
| | : | |
| Defendant. | : | |
| <hr/> | | x |

Plaintiff Banco Santander (Brasil), S.A. (“Santander”), by and through its undersigned counsel, alleges upon knowledge as to itself and its own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This case arises out of a December 9, 2016 AAdvantage Program Participation Agreement (the “Agreement”), between Santander and American Airlines, Inc. (“American Airlines”). A copy of the Agreement is annexed hereto as Exhibit A.

2. Under the Agreement, Santander issues co-branded airline credit cards, jointly sponsored by American Airlines, to qualified cardholders with postal mailing addresses in Brazil (“Brazilian Cardholders”). By making purchases using the credit cards, Brazilian Cardholders earn reward points (“AAdvantage Miles”) for use on American Airlines flights. Under the Agreement, Santander purchases AAdvantage Miles from American Airlines, which American Airlines posts to Brazilian Cardholder accounts to cover the AAdvantage Miles accrued from Brazilian Cardholder purchases.

3. Section 20.4.5 of the Agreement provides a termination option to Santander in the event that American Airlines delays performance or fails to perform due to a “Force Majeure

Event” (as defined in Section 23 of the Agreement) and such delay continues for a period of 90 days. Due to worldwide disruptions to, and unprecedented decrease in demand for, air travel as a consequence of the COVID-19 pandemic, American Airlines has ceased flights between Brazil and the United States for over 90 days.

4. On June 29, 2020, Santander sent a termination letter to American Airlines, seeking to terminate the Agreement in accordance with Section 20.4.5. American Airlines, however, disputes that a termination event has occurred, and insists that Santander continue purchasing millions of dollars of AAdvantage Miles, resulting in a substantial loss to Santander. Terminating the Agreement, as Santander is expressly authorized to do, will avoid millions of dollars in losses that Santander would otherwise incur if it were required to continue performing under the Agreement.

5. Accordingly, through this action, Santander seeks a declaratory judgment that a contractual termination event has occurred, entitling Santander to terminate the Agreement.

PARTIES

6. Santander is a *sociedade anônima* organized under the laws of the Federative Republic of Brazil, with its principal place of business at Avenida Presidente Juscelino Kubitscheck, 2041/2235, Bloco A, Vila Olimpia, São Paulo, São Paulo, 4543011, Brazil.

7. American Airlines is a corporation organized under the laws of Delaware, with its principal place of business at 1 Skyview Drive, Fort Worth, Texas 76155.

JURISDICTION AND VENUE

8. Santander brings this claim for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

9. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2), because there is complete diversity of citizenship between Santander and American Airlines, and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

10. Venue is proper in this Court under 28 U.S.C. § 1391, because the parties contractually agreed in the Agreement that state or federal court “located in the City of New York” would be the “exclusive jurisdiction . . . for the purposes of any suit, action or proceeding arising out of or relating to this Agreement.” (Ex. A § 25.9.) *See, e.g., Power Up Lending Grp., Ltd. v. Nugene Int’l, Inc.*, 2019 WL 2119844, at *11 (E.D.N.Y. Jan. 10, 2019) (“venue is proper” in forum designated in contractual “forum selection clause”); *Textbroker Int’l, LLC v. Skupnick*, 2020 WL 71164, at *1 (S.D.N.Y. Jan. 6, 2020) (“Venue is proper pursuant to the New York forum selection clause in the Terms of Service agreement.”).

SUBSTANTIVE ALLEGATIONS

11. Co-branded credit cards are credit cards jointly sponsored by retailers and banks. Co-branded credit cards are common in the airline industry.

12. Co-branded airline credit cards are marketed to the relevant bank’s customers, who can use the credit card for purchases anywhere the relevant credit cards are accepted, and may earn travel rewards miles to exchange for flights and other products offered by airlines. The more flights the airline has to offer, the more attracted the bank’s clients will be to the co-branded credit card.

13. Generally, airlines benefit from such co-branded credit cards by attracting more customers to their loyalty programs, whereas participating banks benefit by collecting annual fees and interest from cardholders. Cardholders generally benefit by earning points or miles that can be used to purchase flights with the relevant airline.

14. An airline co-branded credit card is beneficial to cardholders and the participating bank (here, Santander) only if, among other things, the airline does what it is supposed to do—that is, to offer regular and abundant flights and ultimately engage in air travel. This is because, from the perspective of a cardholder, the primary and overriding purpose of obtaining airline loyalty rewards miles is to use them for purchasing tickets for air travel. If an airline ceases to engage in air travel, cardholders will not be willing to use the co-branded credit card, and potential cardholders will not apply for a co-branded credit card, because the loyalty rewards miles would be effectively useless.

15. If the airlines ceases to offer regular and abundant flights to multiple jurisdictions, cardholders may lose interest and may stop or reduce significantly the use of the co-branded credit card, which causes the participating bank to incur substantial losses. This is because, as here, the participating bank must purchase from the airline a minimum amount of airline rewards miles per year irrespective of whether cardholders are using the credit cards and earning rewards miles that the participating bank would otherwise post to cardholder accounts.

16. Thus, the existence of a functioning airline industry is a central assumption under which an airline co-branded credit card arrangement exists. Indeed, a central assumption of the Agreement here is that American Airlines continues to engage in air travel between the United States and Brazil.

17. American Airlines has developed and operates its AAdvantage Program, under which program participants, such as Brazilian Cardholders, can exchange AAdvantage Miles for airline tickets on American Airlines flights or certain other purchases. Under the Agreement, Santander is authorized to issue co-branded airline credit cards, jointly sponsored by American Airlines, to Brazilian Cardholders.

18. Under the Agreement, Santander must purchase from American Airlines a minimum quantity of AAdvantage Miles at an established rate per mile. (Ex. A §§ 12.1 & 13.1.) American Airlines posts such AAdvantage Miles to Brazilian Cardholder accounts to cover the AAdvantage Miles accrued from Brazilian Cardholder daily purchases. (Ex. A § 10.1.)

19. The minimum quantity of AAdvantage Miles that Santander must purchase from American Airlines increases over the term of the Agreement, from 201 million AAdvantage Miles in Year 1 of the Agreement, to 4.4 billion AAdvantage Miles in Year 10 of the Agreement. (Ex. A § 13.1.) For example, in Year 4 of the Agreement—which runs from April 1, 2020 to March 31, 2021—Santander must purchase a minimum of 3.2 billion AAdvantage Miles.

20. In addition to purchasing an increasing minimum amount of AAdvantage Miles each year, the purchase price per AAdvantage Mile that Santander must pay also increases each year, from \$0.0146 per mile in Year 1 of the Agreement, to \$0.0158 per mile in Year 10 of the Agreement. (Ex. A § 12.1.) For example, in the current Year 4 of the Agreement, Santander must pay \$0.0146 per AAdvantage Mile.

21. The total dollar amount of AAdvantage Miles that Santander must purchase each year from American Airlines is referred to as the “Revenue Guarantee.” (Ex. A § 13.1.) The Revenue Guarantee ranges from \$2,934,600 in Year 1 of the Agreement, to \$69,520,000 in Year 10 of the Agreement. For example, in the current Year 4 of the Agreement, the total amount of the Revenue Guarantee that Santander must pay American Airlines is \$46,720,000.

22. The Agreement provides that Santander may terminate the Agreement in specified circumstances. In particular, as relevant here, Section 20.4.5 provides:

If pursuant to Section 23 American delays performance or fails to perform due to a Force Majeure Event, and such delay continues for a period of ninety (90) days, then Bank may terminate this Agreement immediately by providing written notice to American.

(Ex. A § 20.4.5 (underline in original).)

Section 23, in turn, defines “Force Majeure Event” broadly to include any “delay[] or failure in [American Airlines’] performance hereunder caused by any act of God, war, strike, labor dispute, work stoppage, fire, act of government, act or attempted act of terrorism or any other cause, whether similar or dissimilar, beyond the control of that Party.” (Ex. A § 23.)

23. The World Health Organization declared COVID-19 a pandemic on March 11, 2020.¹ On March 13, 2020, the United States declared a national emergency in response to COVID-19.²

24. In response to the growing spread of COVID-19, the U.S. Department of State issued an unprecedented Global Level 4 Do Not Travel Advisory on March 19, 2020, “advis[ing] U.S. citizens to avoid all international travel due to the global impact of COVID-19.”³

25. On March 19, 2020, Governor Gavin Newsom of California, the most populous state in the United States, issued a state-wide shelter-in-place order. The order instructed “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operation of the federal critical infrastructure sectors” and

¹ *New ICD-10-CM Code for the 2019 Novel Coronavirus (COVID-19)*, Center for Disease Control and Prevention (April 1, 2020), available at <https://www.cdc.gov/nchs/data/icd/Announcement-New-ICD-code-for-coronavirus-3-18-2020.pdf>.

² *Id.*

³ *U.S. Issues Level “Do Not Travel” Advisory, Urging Citizens to Come Home*, Forbes (March 19, 2020), available at <https://www.forbes.com/sites/suzannerowankelleher/2020/03/19/us-to-issue-level-4-do-not-travel-advisory-urging-citizens-to-come-home/#4f1633dd460d>.

other sectors as designated by the State Public Health Officer.⁴ Governor Andrew Cuomo of New York, the fourth most populous state in the U.S., issued a similar state-wide shelter-in-place order on March 20, 2020.⁵ By April 15, 2020, nearly all states issued some form of shelter-in-place or stay-at-home order.⁶

26. Brazilian states began issuing shelter-in-place orders in late March 2020. For example, Brazil's most populous state, São Paulo, issued a state-wide shelter-in-place order on March 24, 2020, ordering the closure of all businesses except those offering essential services such as food, health, public safety, and urban cleaning.⁷

27. As COVID-19 continued to spread in Brazil, reaching more than 105,000 confirmed cases as of May 4, 2020, several Brazilian cities went beyond shelter-in-place orders and instituted total lockdowns.⁸ São Luis, a city in the northeastern Brazilian state of Maranhão,

⁴ Cal. Exec. Order N-33-20 (March, 19, 2020), available at <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

⁵ N.Y. Exec. Order No. 202.8 (March 20, 2020), available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf.

⁶ See *State 'Shelter-in-Place' and 'Stay-at-Home' Orders*, Finra.org, available at <https://www.finra.org/rules-guidance/key-topics/covid-19/shelter-in-place>.

⁷ *Quarentena Começa a Valer Nesta Terça-Feira em Todo o Estado de SP*, Folha de São Paulo (March 24, 2020), available at <https://agora.folha.uol.com.br/sao-paulo/2020/03/quarentena-comeca-a-valer-nesta-terca-feira-em-todo-o-estado-de-sp.shtml> (article in Portuguese).

⁸ *Brazilian Cities Move Toward Lockdowns as COVID-19 Crisis Intensifies*, The Associated Press (May 12, 2020), available at <https://www.cbc.ca/news/world/brazil-cities-lockdown-1.5567118>.

became the first major Brazilian city to institute such a lockdown on May 5, 2020, “forbid[ding] people from going outside except to obtain groceries, medications or cleaning supplies.”⁹

28. On May 24, 2020, President Trump responded to Brazil’s growing COVID-19 outbreak by issuing a Proclamation “restrict[ing] and suspend[ing] the entry into the United States, as immigrants and nonimmigrants, of all aliens who were physically present within the Federative Republic of Brazil during the 14-day period preceding their entry or attempted entry into the United States,” subject to certain limited exceptions.¹⁰ This Proclamation became effective on May 26, 2020 and will remain in effect until terminated by President Trump.

29. Due to worldwide disruptions to, and unprecedented decline in demand for, air travel as a consequence of the COVID-19 pandemic, American Airlines’ last flight between Brazil and the United States was on March 29, 2020, and American Airlines has not resumed flights between the two countries for over 90 days. On June 4, 2020, American Airlines issued a press release indicating that it intends to resume travel to Brazil on August 5, 2020—which would be 129 days after American Airlines’ last flight between Brazil and the United States on March 29, 2020.¹¹

⁹ *Major Brazilian Cities Set Lockdowns as Virus Spreads*, Reuters.com (May 5, 2020), available at <https://www.reuters.com/article/us-health-coronavirus-brazil-lockdown/major-brazilian-cities-set-lockdowns-as-virus-spreads-idUSKBN22H2V3>.

¹⁰ *Proclamation on Suspension of Entry of Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Novel Coronavirus*, Whitehouse.gov (May 24, 2020), available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-novel-coronavirus/>.

¹¹ *Bring on Summer: American Airlines Increases Domestic Flying for Summer Travel Season, Begins Reopening Admirals Clubs and Increases Flexibility*, American Airlines Press Release (June 4, 2020), available at <http://news.aa.com/news/news-details/2020/Bring-on->

30. In an April 30, 2020 Form 10-Q filed publicly with the United States Securities & Exchange Commission (“SEC”), American Airlines expressly identified the ongoing COVID-19 pandemic as the reason for its reduced (and in the case of Brazil, total suspension of) air travel, stating that “[a]s a result” of the COVID-19 “global health pandemic” and the “implementation of significant, government-imposed measures to prevent or reduce its spread”—including “travel restrictions, closing of borders, ‘shelter in place’ orders and business closures”—American Airlines has “experienced an unprecedented decline in the demand for air travel,” and has “taken aggressive actions to mitigate the effect of COVID-19.”¹² Such steps to mitigate the effects of COVID-19 included “significantly reduc[ing] our capacity (as measured by available seat miles).”¹³ The outbreak of the COVID-19 pandemic, and the resulting government-imposed measures and unprecedented decline in demand for air travel, were “beyond the control” of American Airlines. (Ex. A § 23.)

31. In a June 12, 2020 Form 8-K filed publicly with the SEC, American Airlines reiterated that the ongoing COVID-19 pandemic has caused a “severe decline in demand for air travel,” affecting the company “to an unprecedented extent”:

The COVID-19 outbreak, along with the measures governments and private organizations worldwide have implemented in an attempt to contain the spread of this pandemic, has resulted in a severe decline in demand for air travel, which has adversely affected the Company’s business, operations and financial condition to an unprecedented extent. Measures ranging from travel restrictions, “shelter in place” and quarantine orders, limitations on public gatherings to cancellation of public events and many others have

Summer-American-Airlines-Increases-Domestic-Flying-for-Summer-Travel-Season-Begins-Reopening-Admirals-Clubs-and-Increases-Flexibility-OPS-DIS-06/default.aspx.

¹² American Airlines Form 10-Q dated April 30, 2020.

¹³ *Id.*

resulted in a precipitous decline in demand for both domestic and international business and leisure travel.¹⁴

32. With the United States and Brazil leading the world in confirmed COVID-19 cases according to the World Health Organization's COVID-19 dashboard, as of July 10, 2020,¹⁵ the effects of the COVID-19 pandemic likely will continue to have a fundamental impact on the desirability of air travel between the United States and Brazil for the foreseeable future. Among other things, expectations are for a significant decrease in the demand for air travel for an indeterminate amount of time. Even when travel restrictions, shelter-in-place and quarantine orders are lifted, demand for international air travel will likely remain significantly lower than before the onset of the COVID-19 pandemic due to, among other things, (i) a general reluctance to travel, (ii) the possibility of an actual recurrence of the pandemic, (iii) any government mandates that either impose travel restrictions or limit the number of seats that can be occupied on an aircraft to allow for social distancing, (iv) any government mandates that may discourage certain passengers from traveling, such as any imposing requirements for passengers to wear face coverings while traveling, submit to tests or examinations administered prior to entering an airport or boarding an airplane, or quarantine for at least 14 days upon arrival, and (v) the increased usage of "virtual" teleconferencing products as an alternative to face-to-face meetings.

33. Indeed, analysis by the International Air Transport Association ("IATA") indicates that "[t]he impacts of the [COVID-19] crisis on long-haul travel will be much more severe and of a longer duration than what is expected in domestic markets," that "global passenger

¹⁴ American Airlines Form 8-K dated June 12, 2020.

¹⁵ WHO Coronavirus Disease (COVID-19) Dashboard, available at <https://covid19.who.int>.

demand” in 2021 would be “24% below 2019 levels,”¹⁶ and that “[i]nternational air travel may not recover [to] 2019 levels until 2023-24.”¹⁷ The Organisation for Economic Co-operation and Development (“OECD”) has similarly warned that “expectations are growing that recovery to pre-crisis levels may take two years or more.”¹⁸ On July 1, 2020, American Airlines issued a press release reiterating that “demand has significantly diminished due to COVID-19,” announcing that it was permanently reducing capacity between the United States and Brazil, and stating that “[i]n response to the prolonged downturn in international travel, American expects summer 2021 long-haul international capacity to be down 25% versus 2019.”¹⁹

34. On June 29, 2020, Santander sent a letter to American Airlines pursuant to Section 20.4.5 of the Agreement providing written notice that Santander was terminating the Agreement due to a Force Majeure Event. A copy of Santander’s June 29, 2020 letter is annexed hereto as Exhibit B.

35. On July 6, 2020, American Airlines responded, stating that “American disputes Santander’s right to terminate the Program Agreement pursuant to Section 20.4.5 because no termination event has occurred.”

¹⁶ *Don’t Make A Slow Recovery More Difficult with Quarantine Measures*, IATA (May 13, 2020), <https://www.iata.org/en/pressroom/pr/2020-05-13-03/>.

¹⁷ *COVID-19: Outlook For Air Travel In The Next 5 Years*, IATA (May 13, 2020), available at <https://www.iata.org/en/iata-repository/publications/economic-reports/covid-19-outlook-for-air-travel-in-the-next-5-years/>.

¹⁸ *Tourism Policy Responses to the Coronavirus (COVID-19)*, OECD (June 2, 2020), available at <https://www.oecd.org/coronavirus/policy-responses/tourism-policy-responses-to-the-coronavirus-covid-19-6466aa20/>.

¹⁹ *American Airlines Resets International Network for Remainder of 2020 Through Summer 2021*, American Airlines Press Release (July 1, 2020), <https://news.aa.com/news/news-details/2020/American-Airlines-Resets-International-Network-for-Remainder-of-2020-Through-Summer-2021-OPS-DIS-07/>.

36. As Santander explained in its June 29, 2020 letter, Santander will continue to “perform under the Agreement in order to cause as little disruption as possible to affected Members and Cardholders, but do so under protest,” until receiving a declaratory judgment that its termination of the Agreement is effective. (Ex. B.)

COUNT ONE
(Declaratory Judgment That the Agreement Has Been Terminated Pursuant to the Force Majeure Termination Provision in the Agreement)

37. Santander hereby repeats and realleges the allegations set forth in Paragraphs 1-36 of this Complaint as if fully set forth herein.

38. American Airlines’ cessation of air travel between the United States and Brazil due to the COVID-19 pandemic and the resulting government-imposed measures and unprecedented decline in demand for air travel, all of which were beyond American Airlines’ control, qualifies as a “Force Majeure Event” under Section 23 of the Agreement. In particular, American Airlines’ cessation of air travel was “caused by” an “act of God,” “work stoppage,” “act of government,” or “any other cause, whether similar or dissimilar, beyond the control of [American Airlines].” (Ex. A § 23.)

39. Because American Airlines has ceased air travel between the United States and Brazil for more than 90 days due to the COVID-19 pandemic and the resulting government-imposed measures and unprecedented decline in demand for air travel, all of which were beyond American Airlines’ control, Santander may validly terminate the Agreement pursuant to Section 20.4.5.

40. American Airlines disagrees with Santander’s position that American Airlines’ cessation of air travel between the United States and Brazil for more than 90 days due to the COVID-19 pandemic constitutes a termination event under the Agreement.

41. Accordingly, there is an actual, ongoing, and justiciable controversy between Santander and American Airlines regarding whether the Agreement has been terminated pursuant to the force majeure termination provision of the Agreement (Sections 20.4.5).

42. The dispute is immediate and real because, despite Santander's termination notice, American Airlines insists that the Agreement has not been terminated and that Santander must continue to offer, market, and issue its co-branded cards and pay the more than \$46 million in Revenue Guarantees that would otherwise be due at the end of this contract year (plus pay hundreds of millions of dollars more in additional Revenue Guarantees that would be due if the Agreement continues until the March 2027 termination date). Indeed, American Airlines has stated that it "expects Santander" to "continue to perform under the Program Agreement" despite Santander's termination notice. (American Airlines July 6, 2020 Letter.)

43. A judicial resolution of this dispute will resolve the considerable uncertainty and controversy that currently exists between the parties with respect to whether Santander has validly terminated the Agreement.

44. Accordingly, pursuant to 28 U.S.C. § 2201, Santander is entitled to a declaratory judgment that the Agreement has been terminated effective June 29, 2020—*i.e.*, 90 days after American's last flight between the United States and Brazil—pursuant to the force majeure termination provision of the Agreement (Section 20.4.5).

COUNT TWO
**(Declaratory Judgment, in the Alternative, That Further Performance of the Agreement
By Santander is Excused Under the Common Law Frustration Purpose Doctrine)**

45. Santander hereby repeats and realleges the allegations set forth in Paragraphs 1-36 of this Complaint as if fully set forth herein.

46. Santander entered into the Agreement with American Airlines, and agreed to issue co-branded airline credit cards, on the assumption that American Airlines would continue

operating flights between the United States and Brazil. At the time the parties negotiated and entered into the Agreement, the parties did not foresee that a pandemic would disrupt all air travel worldwide and lead American Airlines to cease all air travel between the United States and Brazil.

47. American Airlines' cessation of air travel between the United States and Brazil has destroyed the underlying reason for Santander to continue performing the Agreement. Moreover, it is anticipated that when American Airlines resumes flights between the United States and Brazil, such flights will not be as attractive to customers nor as comprehensive as they were at the time that American Airlines and Santander entered into the Agreement.

48. American Airlines' cessation of air travel between the United States and Brazil has rendered the Agreement valueless to Santander. Continuing to perform the Agreement will cause Santander to incur millions of dollars in losses by purchasing AAdvantage Miles that are effectively valueless.

49. Moreover, to the extent that American Airlines resumes air travel between the United States and Brazil in some capacity, the effects of the COVID-19 pandemic likely will continue to have a fundamental impact on the desirability of air travel between the United States and Brazil for the foreseeable future. Among other things, expectations are for a significant decrease in the demand for air travel for an indeterminate amount of time. Thus, even after the COVID-19 pandemic begins to abate, Santander likely will continue to incur millions of dollars in losses by purchasing AAdvantage Miles that will be significantly less desirable to Brazilian Cardholders than before the COVID-19 pandemic. As such, Santander's performance will likely be materially more burdensome and costly than it would otherwise be if the COVID-19 pandemic had not occurred.

50. There is an actual, ongoing, and justiciable controversy between Santander and American Airlines regarding Santander's obligations, if any, to continue performing under the Agreement in light of the unforeseen COVID-19 pandemic that has led American Airlines to cease air travel between the United States and Brazil.

51. Santander's position is that American Airlines' cessation of air travel between the United States and Brazil due to the COVID-19 pandemic excuses Santander from performing under the Agreement. American Airlines has taken the opposite view.

52. The dispute is immediate and real because American Airlines insists that Santander must continue to perform under the Agreement, including by continuing to offer, market, and issue its co-branded cards and pay the more than \$46 million in Revenue Guarantees that would otherwise be due at the end of this contract year (plus pay hundreds of millions of dollars more in additional Revenue Guarantees that would be due if the Agreement continues until the March 2027 termination date).

53. A judicial resolution of this dispute will resolve the considerable uncertainty and controversy that currently exists between the parties with respect to whether Santander may validly terminate the Agreement, or, in the alternative, stop performing its obligations under the Agreement.

54. Accordingly, in the alternative, pursuant to 28 U.S.C. § 2201, Santander is entitled to a declaratory judgment that American Airlines' cessation of air travel between the United States and Brazil due to the unforeseen COVID-19 pandemic excuses Santander from continuing to perform under the Agreement.

PRAYER FOR RELIEF

WHEREFORE, Santander is entitled to a judgment against American Airlines:

- a. Declaring that the Agreement has been terminated effective June 29, 2020, pursuant to the force majeure termination provision of the Agreement (Section 20.4.5), and that any final reconciliation for the Revenues Guarantee relating to Year 4 of the Agreement is to be calculated on a pro rata basis up the June 29, 2020 Termination Date.
- b. Declaring, in the alternative, that American Airlines' cessation of air travel between the United States and Brazil due to the unforeseen COVID-19 pandemic excuses Santander from continuing to perform under the Agreement.
- c. Awarding Santander its costs in this action, and reasonable attorneys' fees.
- d. Granting to Santander such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 10, 2020

Respectfully submitted,

/s/ James L. Bromley

James L. Bromley (*bromleyj@sullcrom.com*)

Jacob E. Cohen (*cohenja@sullcrom.com*)

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S.A.*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Banco Santander (Brasil), S.A.

(b) County of Residence of First Listed Plaintiff Brazil
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 James L. Bromley & Jacob E. Cohen
 Sullivan & Cromwell LLP
 125 Broad Street, New York, New York 10004-2498; (212) 558-4000

DEFENDANTS
 American Airlines, Inc.

County of Residence of First Listed Defendant Tarrant County, Texas
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|--|--|--|---|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Declaratory Judgment pursuant to 28 U.S.C. § 2201

Brief description of cause:
Declaratory judgment that contractual termination event has occurred, entitling Plaintiff to terminate contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 07/10/2020

SIGNATURE OF ATTORNEY OF RECORD: /s/ James L. Bromley

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, James L. Bromley, counsel for Banco Santander (Brasil), S.A., do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

-
-
-

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason: Complaint seeks declaratory judgment; value of the object of the litigation exceeds \$150,000

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Parent corporation: Banco Santander, S.A. Entities holding 10% or more common stock: Sterrebeeck BV, Grupo Empresarial Santander SL, and Banco Santander, S.A.

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/ James L. Bromley

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Banco Santander (Brasil), S.A.

Plaintiff(s)

v.

American Airlines, Inc.

Defendant(s)

Civil Action No. 20-cv-3098

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) American Airlines, Inc.
1 Skyview Drive
Fort Worth, Texas 76155

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: James L. Bromley, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004-2498

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 20-cv-3098

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* American Airlines, Inc.
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Exhibit B

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

125 Broad Street
New York, New York 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

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BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

June 29, 2020

Via First Class Mail and E-mail

Priscila Soria Sanchez,
American Airlines, Inc.,
4255 Amon Carter Boulevard,
Fort Worth, TX 76155.

Re: AAdvantage Program Participation Agreement

Dear Ms. Sanchez:

I write on behalf of Banco Santander (Brasil), S.A. ("Santander") regarding the AAdvantage Program Participation Agreement between American Airlines, Inc. ("American") and Santander, dated December 9, 2016 (the "Agreement"). Capitalized terms used but not defined in this letter have the meanings given to them in the Agreement.

We understand that American stopped air travel between the United States and Brazil on March 29, 2020, due to the low demand caused by the ongoing COVID-19 global pandemic, and has not resumed flights between the two countries for over 90 days. On June 4, 2020, American issued a press release indicating that it does not intend to resume travel to Brazil until August 5, 2020 at the earliest.

American's cessation of air travel between the United States and Brazil has undermined the fundamental premise of the Agreement and has substantially eroded the value of the co-branded Santander / AAdvantage® credit card issued by Santander for Brazilian cardholders. With the United States and Brazil leading the world in confirmed COVID-19 cases according to the World Health Organization (WHO Coronavirus Disease (COVID-19) Dashboard, <https://covid19.who.int>), the effects of the COVID-19 pandemic likely will continue to have a fundamental impact on the desirability of air travel between the United States and Brazil for the foreseeable future. Among other things, expectations are for a significant decrease in the demand for air travel for an indeterminate amount of time. Even when travel restrictions, "shelter in place" and quarantine orders are lifted, demand for international air travel will likely remain significantly lower than before the onset of the COVID-19 pandemic due to, among other things, (i) a general reluctance to travel, (ii) the possibility of an actual recurrence of the pandemic, (iii) any government mandates that either impose travel restrictions or limit the number of seats that can be occupied on an aircraft to allow for social distancing, (iv) any government mandates that

Priscila Soria Sanchez

-2-

may discourage certain passengers from traveling, such as any imposing requirements for passengers to wear face coverings while traveling, submit to tests or examinations administered prior to entering an airport or boarding an airplane, or quarantine for at least 14 days upon arrival, and (v) the increased usage of “virtual” teleconferencing products as an alternative to face-to-face meetings.

The COVID-19 pandemic, by itself, and American’s cessation of air travel between the United States for more than 90 days, entitles Santander to terminate the Agreement, including immediate termination under Section 20.4.5 of the Agreement.

Accordingly, this letter serves as notice that Santander is terminating the Agreement under Section 20.4.5. Santander would like to meet with American to coordinate the details and mechanics of the termination process, including, among other things:

- determining any final reconciliation for the Revenues Guarantee relating to Year 4 of the Agreement, which is to be calculated on a pro rata basis up to such Termination Date;
- developing a joint communication plan to advise Members, Cardholders and the general public of the impending termination of the Card Program and a transition plan for the wind down of the Card Program.

Please advise as soon as possible, but no later than July 6, 2020, if American disputes Santander’s right to terminate the Agreement pursuant to Section 20.4.5. If American disputes Santander’s right to terminate the Agreement—or does not respond in writing by July 6, 2020, in which case Santander will proceed on the understanding that American disputes Santander’s right to terminate the Agreement—Santander reserves the right to seek a judicial declaration that a termination event has occurred. In that event, Santander will continue to perform under the Agreement in order to cause as little disruption as possible to affected Members and Cardholders, but do so under protest and reserving all rights, including that the effective date of termination will be the date hereof.

Sincerely,



James L. Bromley

cc: Priya Aiyar
Richard Elieson
(American Airlines, Inc.)