

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

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BANCO SANTANDER (BRASIL), S.A.,	:	
	:	No. 20-cv-3098
Plaintiff,	:	
	:	<b>COMPLAINT</b>
v.	:	
	:	
AMERICAN AIRLINES, INC.,	:	
	:	
Defendant.	:	
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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 [REDACTED] AAdvantage Miles in Year 1 of the Agreement, to [REDACTED] 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 [REDACTED] 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 [REDACTED] per mile in Year 1 of the Agreement, to [REDACTED] 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 [REDACTED] 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 [REDACTED] in Year 1 of the Agreement, to [REDACTED] 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 [REDACTED].

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.<sup>1</sup> On March 13, 2020, the United States declared a national emergency in response to COVID-19.<sup>2</sup>

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.”<sup>3</sup>

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

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<sup>1</sup> *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>.

<sup>2</sup> *Id.*

<sup>3</sup> *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.<sup>4</sup> 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.<sup>5</sup> By April 15, 2020, nearly all states issued some form of shelter-in-place or stay-at-home order.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup> São Luis, a city in the northeastern Brazilian state of Maranhão,

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

<sup>5</sup> 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](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf).

<sup>6</sup> 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>.

<sup>7</sup> *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).

<sup>8</sup> *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.”<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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<sup>9</sup> *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>.

<sup>10</sup> *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/>.

<sup>11</sup> *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.”<sup>12</sup> Such steps to mitigate the effects of COVID-19 included “significantly reduc[ing] our capacity (as measured by available seat miles).”<sup>13</sup> 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

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

<sup>12</sup> American Airlines Form 10-Q dated April 30, 2020.

<sup>13</sup> *Id.*

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

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,<sup>15</sup> 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

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<sup>14</sup> American Airlines Form 8-K dated June 12, 2020.

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

demand” in 2021 would be “24% below 2019 levels,”<sup>16</sup> and that “[i]nternational air travel may not recover [to] 2019 levels until 2023-24.”<sup>17</sup> 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.”<sup>18</sup> 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.”<sup>19</sup>

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.”

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<sup>16</sup> *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/>.

<sup>17</sup> *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/>.

<sup>18</sup> *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/>.

<sup>19</sup> *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 [REDACTED] 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 Judgement, 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 ██████████ 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

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