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Debtors-In-Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	: Chapter 11
AVIANCA HOLDINGS S.A., <i>et al.</i> , ¹	: Case No. 20-11133 (MG)
Debtors.	: (Joint Administration Requested)
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**DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (A)
AUTHORIZING DEBTORS TO PAY PREPETITION CLAIMS OF
FOREIGN VENDORS; AND (B) AUTHORIZING FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

¹ The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



Avianca Holdings S.A. and its affiliated debtors in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) as debtors and debtors-in-possession (collectively, the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):²

RELIEF REQUESTED

By this Motion, the Debtors seek entry of interim and final orders substantially in the forms annexed hereto as **Exhibit A** (the “Proposed Interim Order”) and **Exhibit B** (the “Proposed Final Order”), pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”), (a) authorizing the Debtors to pay the prepetition obligations owed to Foreign Creditors (as defined below); (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to which checks and transfers are authorized to be paid in accordance with this Motion; and (c) to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing.³ The Debtors request that they be authorized, but not directed, to pay the Foreign Creditors \$9 million on an interim basis and \$19 million on a final basis. In support thereof, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the First Day Declaration (defined below).

³ The claims of Foreign Creditors, as to which authority to make payment is requested in this Motion, are not the subject of any other motion or request for relief filed or made by the Debtors on the Petition Date.

4. The bases for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code.

STATUS OF THE CASE

5. On the date hereof (the "Petition Date"), each of the Debtors filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases").

6. Each Debtor is continuing to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. No creditors' committee has yet been appointed in these cases. No trustee or examiner has been appointed.

8. The Debtors have filed a motion requesting joint administration of the Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules").

BACKGROUND

9. Avianca is the second-largest airline group in Latin America and the most important carrier in the Republic of Colombia and in the Republic of El Salvador. It is the largest airline in the Republic of Colombia (the third largest Latin American economy), a code-share partner of United Airlines, and a member of the Star Alliance which, with 26 members, is the world's largest global airline alliance. Established in 1919, Avianca has a 100-year legacy as a leading provider of air travel and cargo services in the Latin American market and around the globe. Avianca is well respected throughout Latin America and maintains significant customer brand equity and market share in the regions it services.

10. The Debtors operate an extensive network of routes from their primary hubs in Bogotá and San Salvador (in addition to other focus markets) and offer passenger services on more than 5,350 weekly flights to more than 76 destinations in 27 countries. With approximately

18,900 employees and approximately \$3.9 billion in annual revenues, the Debtors play a key role in the Latin American airline market.

11. Despite an effective debt reprofiling executed in the second half of 2019, a significant improvement in Avianca's liquidity position in early 2020, and the successful 2019 launch of the "Avianca 2021" transformation plan, the Debtors have been compelled to file these Chapter 11 Cases for one principal reason: the COVID-19 pandemic, which has affected the world's population and economies in ways that have never been experienced. The reduction in travel as a result of the virus, and the measures undertaken to combat the virus, including restrictions commercial flights and on travel, have had and will continue to have an adverse impact on the Debtors. As a result of the ongoing pandemic and its consequences, the Debtors are facing significantly reduced revenues from ticket sales and ancillary revenues, government prohibitions globally on international flights, substantial ongoing contractual obligations to their lessors, lenders and other creditors, and a near complete standstill of the global economy—all with significant continued impact and limited visibility as to the potential market recovery.

12. On March 20, 2020, the Republic of Colombia, consistent with what numerous other governments around the world have done, announced that it would close its airspace to address the spread of COVID-19. As a result of the restrictions imposed by the Colombian government, as well as similar measures in various other of the Debtors' primary markets, on March 24, 2020 the Debtors announced that they were suspending all scheduled passenger flights from March 25, 2020 until at least the end of April 2020; this situation has now been extended and is ongoing, and no date has been established for restart of flights.

13. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the

Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Motions (the “First Day Declaration”), which is being filed contemporaneously herewith and is incorporated by reference herein.

BACKGROUND RELEVANT TO MOTION

14. Given the global nature of their services, the Debtors must necessarily procure a significant amount of goods and services from vendors with little to no connection with the United States. Indeed, as the second-largest airline in Latin America, the majority of the Debtors’ operations is conducted outside of the United States. Prior the shutdown caused the COVID-19 pandemic, international destinations serviced by the Debtors included 76 cities in 27 countries in North America, South America, Central America, the Caribbean, and Europe. Thus, the Debtors’ viability as a going concern is disproportionately dependent upon the maintenance of their foreign operations.

15. In the ordinary course of their businesses, and to maintain their foreign operations, the Debtors make payments to various foreign creditors including vendors, service providers, customers, travel agencies, and distributors, among others (collectively, the “Foreign Creditors”). Some of the Debtors’ obligations to the Foreign Creditors—approximately \$17 million—has accrued but remains unpaid as of the Petition Date.

16. Many of the Foreign Creditors, who are located in foreign countries with little to no contacts in the United States, may not be willing to do business with a “Chapter 11 Debtor” absent payment of their prepetition claims (such claims, the “Foreign Creditor Claims”). Despite the global reach of the automatic stay, it is also possible (if not likely) that certain Foreign Creditors could seek to enforce their claims against the Debtors in foreign jurisdictions or otherwise interfere with the Debtors’ business outside the United States. Such actions would have both an immediate

impact on the Debtors' ability to operate and would have long-term effects on the Debtors' ability to attract new business. Simply put, the Debtors' clients and customers will be wary (at best) of entrusting their assets and investments to the Debtors if they perceive a risk that such assets and investments might be subject to liens or other enforcement actions by the Debtors' creditors in jurisdictions outside of the United States.

17. Additionally, many of the Foreign Creditors are vendors and service providers from whom the Debtors purchase goods and services (collectively, the "Foreign Vendors") in the ordinary course of their operations in foreign jurisdictions. If the Foreign Vendors are not paid, they could withhold vital goods and services from the Debtors and thereby cause an interruption of service on the Debtors' foreign routes. Such service interruption could have drastic consequences to the operations of the Debtors' business due to the Debtors' dependence on their foreign operations, the lack of alternative foreign suppliers or service providers in many situations, and the amount of time needed to locate and convert to alternative supply or service sources in foreign countries. The successful operation of the Debtors' business depends on providing these clients and customers the high-quality flight services and travel experience that they have come to expect from the Debtors. Any interruption in the provision of these services, or any negative impact on the Debtors' ability to provide these services in the future, could be disastrous to the Debtors' business. Therefore, maintaining the Debtors' operational capability to provide these products and services depends on their ability to obtain essential goods and services from select and often irreplaceable vendors, and their ability to preserve key relationships with certain creditors in the Debtors' key markets.

18. Despite the existence of the automatic stay, the Debtors believe based on the experience of their personnel that if they do not pay prepetition obligations to Foreign Vendors,

there is a significant risk that Foreign Vendors will commence actions against one or more of the Debtors in foreign courts or exercise other self-help remedies in an effort to recover such prepetition amounts. Such actions could disrupt service, undermine customer confidence in the Debtors' business, and could require the attention and resources of the Debtors' management team at a time when the Debtors are keenly focused on their restructuring. There may be no effective sanctions against such Foreign Vendors' actions.

19. The Debtors must obtain immediate authority to pay Foreign Creditors in order to avoid irreparable harm to their businesses. Notwithstanding the fact that the Debtors' passenger transport business has been grounded due to COVID-19 and related restrictions, the Debtors' cargo transport business remains in full operation and generally has not been subject to the travel restrictions imposed by various governments in the markets which the Debtors operate. Moreover, the Debtors also must continue to operate limited charter flights, repatriation flights, and "ferry flights" of their passenger aircraft (involving the repositioning and relocation of various passenger aircraft depending on aircraft parking and storage availability in various locations). The Debtors also continue to perform certain "lead time" operations in anticipation of a modest near-term resumption of passenger flights. Certain operations must be undertaken sufficiently in advance—such as aircraft maintenance, ticket sales, and ongoing flight training—to allow for passenger flights to timely resume when circumstances permit. The relief requested herein is therefore necessary and appropriate to accomplish these goals and to protect against further diminution in the value of the Debtors' businesses.

20. As a result of the foregoing, and pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek interim and final orders, (a) authorizing the Debtors to pay the prepetition obligations owed to Foreign Creditors; (b) authorizing banks and other financial

institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to which checks and transfers are authorized to be paid in accordance with this Motion; and (c) to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing.

THE FOREIGN CREDITORS

21. The Foreign Creditors provide the Debtors with a wide array of services as set forth in greater detail below:

- **Maintenance Services.**⁴ The Debtors are subject to regulations imposed by the FAA and other international regulatory agencies for aircraft safety and sanitation. The Debtors thus rely on Foreign Vendors to service and clean their aircraft at domestic and international airports. For example, as part of their maintenance of aircraft located throughout the world, the Debtors regularly borrow or purchase parts from other airlines operating at the same airports and employ various persons to perform “line maintenance.” The Debtors’ relationships with maintenance service providers are subject to many mandatory layers of oversight and control by the FAA and other international regulatory agencies, the original equipment manufacturers (“OEMs”), and the Debtors’ engineers. Maintenance service providers are difficult to source because they are subject to mandatory certification and approval by several entities prior to an airline being able to use the services. Therefore, the Debtors’ options for maintenance service providers are limited. Aircraft maintenance service providers are also subject to licensing, certification, or approval of the FAA and other international regulatory agencies.
- **Ground Handling.** In addition, the Debtors rely on Foreign Vendors to provide cargo handling services, passenger screening, catering and aircraft inspection, and other security related services. The Debtors employ ground crew specialists to communicate with their pilots and airport traffic controls to guide the pilots on take-offs and landings. Moving passengers, baggage, and cargo from the point of origin to the ultimate destination requires specialized products and services driven by FAA, other international regulatory agencies, airline, and airport requirements. These goods and services include, but are not limited to, check-in equipment, baggage sorter parts, ground equipment, ground support, cargo ground handling, and de-icing. Certain locations may only have one service provider at the airport.

⁴ Maintenance providers that are also “lien claimants”—inasmuch as relevant local law entitles such creditors to a statutory lien securing any amounts owed to them for their services—may also be beneficiaries of the *Debtors’ Motion for an Order Pursuant to Sections 105(A) and 363 of the Bankruptcy Code Authorizing the Debtors to Pay Certain Outside Maintenance and Service Providers, Shippers, and Contractors in Satisfaction of Perfected or Potential Mechanics’, Materialmen’s or Similar Liens or Interests*, which is being filed simultaneously herewith. The relief requested herein is for the benefit of maintenance providers without such a statutory lien entitlement.

This is common at international locations and at the smaller airports (which the Debtors serve for its customers.).

- **In-flight Goods and Services.** The Debtors regularly make payments to Foreign Vendors and Foreign Creditors that supply food, drink, and other goods to the Debtors for use in connection with their day-to-day domestic and international operations and in-flight services provided to passengers.
- **Flight Communications and Information Technology Suppliers and Service Providers.** The Debtors' business requires a vast and complex set of management and information systems. To sustain their complex flight operations, the Debtors require, among other things, timely communication with their aircraft and access to critical data, including air traffic, weather patterns, and other information affecting the ability to safely and effectively navigate and communicate with their aircraft. The Debtors also require certain administrative services such as telephonic customer service and IT call center services. The applications and infrastructure knowledge of these suppliers for the Debtors' information technology environment is unique to the airline industry and critical to ongoing operations. Replacement systems could be less than completely accurate and would require comprehensive and lengthy testing. Even if the Debtors could replace these suppliers and service providers, replacement would take substantial time at great cost to the Debtors' business. Without reliable access to all of these critical systems, the Debtors' aircraft would be grounded.

22. Absent these services, the Debtors' operations would be severely impaired. In addition, given the locale, these service providers may be difficult (if not impossible) or cost prohibitive to replace. Avianca operates in a highly specialized, highly regulated, and highly competitive industry. The uniqueness and competitiveness of the airline industry, coupled with the highly-regulated venue in which airlines must operate, leave airlines with few options with respect to certain vendors and service providers. Even where more than one vendor can be located to provide a service, regulations promulgated by the Federal Aviation Administration ("FAA") and international equivalents may inhibit an airline's ability to switch expeditiously from one supplier of goods or services to another.

23. The Debtors also purchase goods and services from certain Foreign Vendors that are sole- or limited-source suppliers without which the company could not operate. Unlike vendors that may be easily and timely replaceable, these suppliers are, by definition, irreplaceable absent

extraordinary expense or extensive delay, and as a result, these limited-source suppliers are in the unique position of having a virtual monopoly over the goods and services they provide.

24. While the Debtors expect to be able to assure a continuing postpetition supply of goods and services by consensual negotiation with their Foreign Creditors, they recognize that their fiduciary duties require that they make preparations to address those Foreign Creditors that may refuse to provide future goods or services unless their prepetition claims are paid. Indeed, the lack of each of their particular goods or services, even for a short duration, will likely cause irreparable harm to the Debtors' business as a result of the potential disruption to its flight operations. The Debtors submit that the irreparable harm thus caused will far outweigh the cost of paying the claims of the Foreign Creditors.

25. Accordingly, as discussed further below, it is in the best interests of the Debtors' estates and creditors to pay some or all of the Foreign Creditor Claims. In connection with the payment of the Foreign Creditor Claims, the Debtors propose (unless otherwise waived by the Debtors in their discretion) that in exchange for payment of their prepetition Foreign Creditor Claims, the Foreign Creditors continue to provide goods and services to the Debtors on the most favorable terms in effect between the Foreign Creditor and the Debtors in the twelve (12) month period preceding the Commencement Date or on such other terms as the Debtors and the Foreign Creditor may otherwise agree (the "Customary Trade Terms"). The Debtors propose that the Customary Trade Terms apply for the balance of the term of the Foreign Creditor's agreement with the Debtors; *provided, however*, that the Debtors pay for the goods and services in accordance with the payment terms provided in the agreement. If any Foreign Creditor is paid its prepetition Foreign Creditor Claim and thereafter does not continue to provide goods, services, or other items to the Debtors on Customary Trade Terms, any payments made will be deemed an avoidable

postpetition transfer under section 549 of the Bankruptcy Code and will be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the Foreign Creditor Claims will be reinstated as a prepetition claim in the amount recovered. The Debtors also seek authorization, but shall not be obligated, to obtain written verification, before issuing payment to a Foreign Creditor, that the Foreign Creditor will continue to provide goods and services to the Debtors on Customary Trade Terms as described above; *provided, however*, that the absence of written verification will not limit the Debtors' rights and relief sought herein.

BASIS FOR RELIEF REQUESTED

26. The global nature of the Debtors' business is a key source of revenue and a major factor in the overall reputation of the Debtors and the loyalty of their customers. To preserve the value of the Debtors' assets, the Debtors must have the ability to continue to fund and maintain their international operations on an uninterrupted basis through the payment of the Foreign Creditor Claims.

APPLICABLE AUTHORITY

A. This Court Should Authorize the Debtors to Pay Prepetition Amounts Owed to Foreign Creditors

27. The Debtors believe that their ability to pay prepetition claims of the Foreign Creditors is critical to the Debtors' continuing business operations because such parties may take adverse actions against the Debtors' substantial assets located abroad. Moreover, certain of the Foreign Creditors cannot easily or quickly be replaced if they refuse to work with the Debtors on a go-forward basis.

28. As a preliminary matter, such relief and the Debtors' proposed Foreign Creditor payment cap is consistent with similar relief awarded by this Court and others, including in large airline cases. See, e.g., In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22,

2011) [Docket No. 425] (granting authority for debtors to pay approximately \$355 million in prepetition foreign creditor claims based in part on debtors' representations that absent such relief, "Foreign Creditors likely would be able to immediately pursue remedies and seek to collect prepetition amounts owed to them"); In re Delta Airlines Inc., Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 15, 2005) [Docket No. 153] (granting the debtors authority to pay an undetermined amount of foreign creditor claims (based on \$24.96 million of monthly disbursements to foreign creditors) given debtors' representations that non-payment of foreign creditors "will place the Debtors at risk of asset seizures, lien filings and other self-help remedies that may be available to Foreign Creditors under the laws of their respective jurisdictions."); In re Northwest Airlines Corp., Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Oct. 7, 2005) [Docket No. 73] (granting the debtors authority to pay approximately \$57 million in prepetition foreign creditor claims based in part on debtors' representations that absent such relief, foreign creditors may "disregard the automatic stay and engage in conduct under local law to seize the Debtors' foreign assets or otherwise deny services to the Debtors, thereby severely disrupting the Debtors' international operations"); In re US Airways Inc., Case No. 04-13819 (SSM) (Bankr. E.D. Va. Sept. 14, 2004) [Docket No. 73] (granting the debtors authority to pay an undetermined amount of foreign creditor claims (based on \$25 million of monthly disbursements to foreign creditors) given debtors' representations that absent such relief, foreign creditors "could, among other things, sue in a foreign court and obtain a judgment against the Debtors to collect prepetition amounts owed to them," "immediately seek to attach or seize the Debtors' foreign assets," and "refuse to do business with the Debtors."); see also In re Nine West Holdings, Inc., Case No. 18-10497 (SCC) (Bankr. S.D.N.Y. May 7, 2018) [Docket No. 214] (granting the debtor authority to pay approximately \$38.4 million in prepetition foreign creditor claims); In re Republic Airways Holdings Inc., Case

No. 16-10429 (SHL) (Bankr. S.D.N.Y. Mar. 23, 2016) [Docket No. 199] (granting the debtors authority to pay approximately \$500,000 in prepetition foreign creditor claims); In re Chassix Holdings Inc., Case No. 15-10578 (Bankr. S.D.N.Y. Mar. 12, 2015) (MEW) [Docket No. 277] (granting the debtor authority to pay approximately \$13 million in prepetition foreign creditor claims).⁵

29. In a long line of well-established cases, courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. See, e.g., Miltenberger v. Logansport, C&S W.R. Co., 106 U.S. 286, 312 (1882) (payment of pre-receivership claim before reorganization permitted to prevent "stoppage of [crucial] business relations"); Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir.) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases), *cert. denied* 325 U.S. 873 (1945); Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 285-86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

30. This "doctrine of necessity" functions in a chapter 11 reorganization as a mechanism by which the Court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. See In re Boston & Me. Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing "existence of a judicial power to authorize trustees . . . to pay claims [for] goods and services indispensably necessary" to debtors' continued operation); In re Structurelite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) ("a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the

⁵ The Debtors have not annexed copies of the unreported orders cited herein because of their size. Copies of these orders, however, are available upon request of the Debtors' counsel, including at the hearing to consider the Motion.

effectuation of the rehabilitative purposes of the Code”). The rationale for the “doctrine of necessity” is consistent with the paramount goal of chapter 11—“facilitating the continued operation and rehabilitation of the debtor.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

31. In addition, section 363(b) provides that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Pursuant to section 363(b), a court may authorize a debtor to pay certain prepetition obligations. See, e.g., In re Ionosphere Clubs, 98 B.R. at 175. To approve the use of a debtor’s assets outside the ordinary course of business pursuant to section 363(b), a court must find that a “good business reason” exists for the use of such assets. See, e.g., Official Comm. of Unsecured Creditors of Enron Corp. v. Enron Corp. (In re Enron Corp.), 335 B.R. 22, 27-28 (S.D.N.Y. 2005) (quoting In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983)).

32. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)), appeal dismissed, 3 F.3d 49 (2d Cir. 1993). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this District consistently have declined to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and have upheld a board’s decisions as long as those decisions are attributable to any “rational business

purpose.” Integrated, 147 B.R. at 656 (quoting CRTF Corp. v. Federated Dep’t Stores, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)).

33. Furthermore, a debtor-in-possession operating a business has a fiduciary duty to protect and preserve the estate, including the going-concern value of an operating business. See In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”); see also Unofficial Comm. of Equity Holders of Penick Pharm., Inc. v. McManigle (In re Penick Pharm., Inc.), 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“Specifically, in the case of an inanimate debtor in possession such as a corporation, the fiduciary duties born by a trustee for a debtor out of possession fall on the debtor’s directors, officers and managing employees . . . who have a duty to maximize the value of the estate . . . and who are burdened to ensure that the resources that flow through the debtor in possession’s hands are used to benefit the unsecured creditors and other parties in interest.” (citations omitted)).

34. Finally, section 105(a) of the Bankruptcy Code provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); see Schwartz v. Aquatic Dev. Grp., Inc. (In re Aquatic Dev. Grp., Inc.), 352 F.3d 671, 680 (2d Cir. 2003) (“[I]t is axiomatic that bankruptcy courts are ‘courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.’”); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (recognizing the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment “is essential to the continued operation of the debtor”).

35. The Debtors’ ability to pay prepetition obligations owed to Foreign Creditors is crucial to the preservation and protection of the Debtors’ estates and ultimately to their successful

reorganization. The obligations owed to Foreign Creditors represent a small percentage of the Debtors' total prepetition debts, but their satisfaction will contribute significantly to the Debtors' immediate business viability and future revenue-generating capability by enabling the Debtors to continue to provide a high level of service and preserving the confidence and goodwill of their foreign customers and suppliers. Without that support, the interests of all of the Debtors' stakeholders will suffer immeasurably. Therefore, the Debtors believe, in the exercise of their business judgment, that it is in the best interests of their estates if they are authorized (but not directed) to pay prepetition amounts owed to the Foreign Creditors. Moreover, as noted above, courts in this District have routinely authorized the payment of vital prepetition creditors and suppliers in complex reorganizations, including in large chapter 11 cases involving airlines, where such payment is in the best interest of the estate and its creditors and is critical to maintaining a debtor's operations.

36. The limitations of the enforceability of the automatic stay, the risk of Foreign Creditors exercising remedial rights, and the critical nature of goods and services provided by the Foreign Creditors mandate that the relief requested in this Motion be granted. Without the uninterrupted continuance of the Debtors' international operations, the Debtors' flight schedules will be disrupted, jeopardizing the Debtors' overall ability to operate their business. Simply stated, payment of the Foreign Creditor Claims, as proposed, will assure the orderly operation of the Debtors' business and avoid costly disruptions and the significant loss of value and irreparable harm arising therefrom.

B. The Court Should Authorize and Direct Banks and Other Financial Institutions to Honor and Pay Checks Issued and Make Other Transfers to Pay Foreign Entities

37. The Debtors request that the Court authorize and direct the Debtors' banks and other financial institutions at which the Debtors maintain disbursement accounts at the Debtors'

direction, to receive, process, honor, and pay, to the extent of funds on deposit, any and all checks drawn or electronic fund transfers requested or to be requested by the Debtors relating to the Debtors' obligations to Foreign Entities. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such obligations to replace any prepetition checks or electronic fund transfer requests that may be lost, dishonored, or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

RESERVATION OF RIGHTS

38. Nothing contained herein is intended to be or shall be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in interest's right to dispute any claim; or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or waiver of the Debtors' rights to dispute such claim subsequently.

**BANKRUPTCY RULE 6003 IS SATISFIED
AND REQUEST FOR WAIVER OF STAY**

39. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

40. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim

that arose before the filing of the petition, but not a motion under Rule 4001

Fed. R. Bankr. P. 6003.

41. As described above, payment to the Foreign Entities is critical and necessary to maintain the Debtors' operations, as well as the safety and wellbeing of the Debtors' customer base. Moreover, it is the Debtors' business judgment that continuation of their positive relationship with the Foreign Entities is imperative to their continued operations. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm and, therefore, Bankruptcy Rule 6003(b) is satisfied.

42. The Debtors further seek a waiver of any stay of the effectiveness of an order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth above, the relief requested herein is essential to prevent immediate and irreparable damage to the Debtors' operations, going concern value, and their efforts to pursue a resolution to these Chapter 11 Cases.

43. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rules 6003 and 6004(h).

NOTICE

44. The Debtors will provide notice of this Motion to the following parties: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the forty (40) largest unsecured claims against the Debtors (on a consolidated basis); (c) the holders of the five (5) largest secured claims against the Debtors (on a consolidated basis); (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the Federal Aviation

Administration; and (g) any party that requests service pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

45. No prior request for the relief sought in this Motion has been made to this or to any other court.

CONCLUSION

WHEREFORE, the Debtors request that this Court enter an order, substantially in the form of the Proposed Order, granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: New York, New York
May 10, 2020

MILBANK LLP

/s/ Evan R. Fleck

Dennis F. Dunne

Evan R. Fleck

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*Proposed Counsel for Debtors and
Debtors-in-Possession*

EXHIBIT A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re: : Chapter 11
: :
AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
: :
Debtors. : (Joint Administration Requested)
: :
-----X

**INTERIM ORDER AUTHORIZING (A) DEBTORS TO
PAY PREPETITION CLAIMS OF FOREIGN CREDITORS; AND (B) FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of an order (this “Order”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), for entry of interim and final orders (a) authorizing the Debtors to pay the prepetition claims of foreign creditors (the “Foreign Creditors”); (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to which checks and transfers are authorized to be paid in accordance with this Motion; and (c)

¹ The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing; and upon the First Day Declaration in support thereof; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein on an interim basis.
2. The Debtors are authorized to pay in the ordinary course of the Debtors' businesses some or all of the prepetition claims that are due and owing to the Foreign Creditors (the "Foreign Creditor Claims"), in an aggregate amount not to exceed \$9 million (the "Interim Cap") until entry of a final order.
3. In exchange for payment of the Foreign Claims, unless otherwise waived by the Debtors in their sole discretion, the Foreign Creditors shall be required to continue to provide goods and services to the Debtors on the most favorable terms in effect between such Foreign Creditor and the Debtors in the twelve (12) month period preceding the Commencement

Date or on such other terms as the Foreign Creditor and the Debtors may otherwise agree (the “Customary Trade Terms”). The Customary Trade Terms shall apply for the remaining term of the Foreign Creditor’s agreement with the Debtors; *provided, however*, that the Debtors pay for the goods and services in accordance with the payment terms provided in the agreement.

4. The Debtors are hereby authorized, but not directed, to obtain written verification, before issuing payment to a Foreign Creditor, that such Foreign Creditor will, if applicable, continue to provide goods and services to the Debtors on Customary Trade Terms for the remaining term of the Foreign Creditor’s agreement with the Debtors; *provided, however*, that the absence of such written verification shall not limit the Debtors’ rights hereunder.

5. If any Foreign Creditor is paid with respect to its Foreign Creditor Claim and thereafter does not continue to provide goods or services to the Debtors on Customary Trade Terms, any payments made to the Foreign Creditor shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the Foreign Creditor Claim shall be reinstated as a prepetition claim in the amount recovered.

6. This Order shall not be construed to limit, or in any way affect, the Debtors’ ability to contest any invoice or other charge or claim of any Foreign Creditor.

7. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfers regarding amounts authorized to be paid by the Debtors under this Order, without regard to whether any check or transfer was issued before or after the Petition Date. Such banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or transfer issued by the Debtors before the Petition Date should be honored pursuant to this Order,

and shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

8. The Debtors are authorized, in their sole discretion and to the extent necessary, to issue checks and transfers postpetition to replace any checks or transfers in respect of the Foreign Vendors' claims that are dishonored or rejected.

9. Nothing contained in this Order shall be deemed to constitute an assumption of any executory contract or to require the Debtors to make any of the payments authorized herein.

10. Any payment made pursuant to this Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to subsequently dispute such obligation.

11. Notwithstanding entry of this Order, the Debtors' rights to seek enforcement of the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor that demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

12. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

13. The final hearing on the relief requested in the Motion shall be on _____, 2020 at ___:00 a.m. (prevailing Eastern Time). The deadline by which objections to entry of the Final Order must be filed is _____, 2020 at 4:00 p.m. (prevailing Eastern Time) and served upon (i) proposed counsel to the Debtors; (ii) the Office of the United States Trustee for the Southern District of New York, and (iii) proposed counsel to the Committee. If no objections are timely filed, the Court may enter the Final Order without further notice or hearing.

14. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

15. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The notice requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

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

Dated: New York, New York
_____, 2020

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
:

In re: : Chapter 11

:

AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)

:

Debtors. : (Joint Administration Requested)

:

-----X

**FINAL ORDER AUTHORIZING (A) DEBTORS TO
PAY PREPETITION CLAIMS OF FOREIGN CREDITORS; AND (B) FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of an order (this “Order”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), for entry of interim and final orders (a) authorizing the Debtors to pay the prepetition claims of foreign vendors (the “Foreign Creditors”); (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to which checks and transfers are authorized to be paid in accordance with this

¹ The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

Motion; and (c) to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing; and upon the First Day Declaration in support thereof; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein on a final basis.
2. The Debtors are authorized to pay in the ordinary course of the Debtors' businesses some or all of the prepetition claims that are due and owing to the Foreign Creditors (the "Foreign Creditor Claims"), in an aggregate amount not to exceed \$19 million (the "Payment Cap").
3. This Order is entered without prejudice to the Debtors' right to request further authority from this Court, after notice and a hearing, to pay any amounts owed to Foreign Vendors in excess of the Payment Cap.

4. In exchange for payment of the Foreign Claims, unless otherwise waived by the Debtors in their sole discretion, the Foreign Creditors shall be required to continue to provide goods and services to the Debtors on the most favorable terms in effect between such Foreign Creditor and the Debtors in the twelve (12) month period preceding the Commencement Date or on such other terms as the Foreign Creditor and the Debtors may otherwise agree (the “Customary Trade Terms”). The Customary Trade Terms shall apply for the remaining term of the Foreign Creditor’s agreement with the Debtors; *provided, however*, that the Debtors pay for the goods and services in accordance with the payment terms provided in the agreement.

5. The Debtors are hereby authorized, but not directed, to obtain written verification, before issuing payment to a Foreign Creditor, that such Foreign Creditor will, if applicable, continue to provide goods and services to the Debtors on Customary Trade Terms for the remaining term of the Foreign Creditor’s agreement with the Debtors; *provided, however*, that the absence of such written verification shall not limit the Debtors’ rights hereunder.

6. If any Foreign Creditor is paid with respect to its Foreign Creditor Claim and thereafter does not continue to provide goods or services to the Debtors on Customary Trade Terms, any payments made to the Foreign Creditor shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the Foreign Creditor Claim shall be reinstated as a prepetition claim in the amount recovered.

7. This Order shall not be construed to limit, or in any way affect, the Debtors’ ability to contest any invoice or other charge or claim of any Foreign Vendor.

8. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfers

regarding amounts authorized to be paid by the Debtors under this Order, without regard to whether any check or transfer was issued before or after the Petition Date. Such banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or transfer issued by the Debtors before the Petition Date should be honored pursuant to this Order, and shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

9. The Debtors are authorized, in their sole discretion and to the extent necessary, to issue checks and transfers postpetition to replace any checks or transfers in respect of the Foreign Vendors' claims that are dishonored or rejected.

10. Nothing contained in this Order shall be deemed to constitute an assumption of any executory contract or to require the Debtors to make any of the payments authorized herein.

11. Any payment made pursuant to this Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to subsequently dispute such obligation.

12. Notwithstanding entry of this Order, the Debtors' rights to seek enforcement of the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor that demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

13. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

14. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

15. The notice requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

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

Dated: New York, New York
_____, 2020

UNITED STATES BANKRUPTCY JUDGE