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Dennis F. Dunne
Evan R. Fleck
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Gregory Bray
MILBANK LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000
Facsimile: (213) 629-5063

Proposed Counsel for Debtors and Debtors-In-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO SECTIONS 105(a), 362, 363, AND 553 OF THE BANKRUPTCY CODE (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY PREPETITION AMOUNTS OWING TO FUEL RELATIONSHIP PARTIES AND TO CONTINUE PERFORMING UNDER RELATED CONTRACTS; AND (II) AUTHORIZING THE FUEL RELATIONSHIP PARTIES TO EXERCISE THEIR SETOFF AND RECOUPMENT RIGHTS

[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.

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

1. By this Motion, the Debtors respectfully request that the Court enter 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), 362, 363(b), and 553 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the "Bankruptcy Code"), (i) authorizing (but not directing) the Debtors to pay prepetition amounts owing to the Fuel Relationship Parties (as defined herein) and to continue performing under related contracts; (ii) authorizing the Fuel Relationship Parties to, subject to the prior written permission of the Debtors, exercise their setoff and recoupment rights to apply any prepetition credits or prepayments toward the Debtors' outstanding obligations; (iii) scheduling a final hearing (the "Final Hearing") on the Motion; and (iv) granting related relief. Notwithstanding the fact that the Debtors' passenger transport business has been grounded, the Debtors must obtain, as set forth herein, immediate authority to pay the Fuel Relationship Parties in order to avoid irreparable harm to their businesses.

JURISDICTION

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

[2] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105(a), 362 and 363(b) and 553 of the Bankruptcy Code.

STATUS OF THE CASE

6. On the date hereof (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

7. 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.

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

9. 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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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

15. The Debtors seek by this Motion immediate authority to pay prepetition amounts owing to the Fuel Relationship Parties (as defined herein) and to continue performing under related contracts in order to avoid irreparable harm to their businesses. Each month, the Debtors spend approximately $100 million on fuel acquisition and fuel-related services. An uninterrupted and ready fuel supply is of critical importance to the Debtors' continued operations and ability to operate their fleet. As such, it is imperative that the Debtors are able to continue performing under their fuel purchase, services, and distribution agreements. These complex relationships are essential to the Debtors' efforts to manage their fuel supply and fuel costs effectively. Absent the relief requested herein, the Debtors' fuel purchase and distribution system could be severely interrupted for an unknown duration, causing significant operational and financial disruption and threatening the Debtors' ability to reorganize.

16. Notwithstanding the fact that the Debtors' passenger transport business has been grounded, the Debtors must obtain immediate authority to pay the Fuel Relationship Parties in order to avoid irreparable harm to their businesses. 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 where the Debtors operate. Moreover, the Debtors also must continue to operate their passenger aircraft for limited charter, repatriation, and "ferry flights," which

involve 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 and ongoing flight training—to allow for passenger flights to timely resume when circumstances permit. All of the foregoing requires an uninterrupted and ready fuel supply, and, thus, the relief requested herein is necessary and appropriate to accomplish these goals and to protect against further diminution in the value of the Debtors' businesses.

A. Fuel Acquisition

17. Certain Debtor entities purchase fuel directly from numerous fuel suppliers, which purchases were, for 2019, in the following volumes:[3]

Airline	Gallons
Avianca SA	342,768,996
Taca International	62,399,997
Tampa Cargo	39,891,648
Avianca Perú	32,666,950
Avianca Ecuador	22,255,145
Aeronunion	9,800,000
Avianca Costa Rica	9,496,725
Regional Express (Purchased by Avianca)	6,021,107
Aviateca	4,015,276
Islena	111,251
Total	**529,427,096**

18. Prior to the filing of these Chapter 11 Cases, the Debtors purchased jet fuel from approximately nineteen (19) fuel suppliers (the "Fuel Suppliers") pursuant to fuel supply contracts

[3] These airline companies primarily service aircraft within their respective fleets and, to the extent necessary, will cross-sell jet fuel to each other. In limited circumstances, the Debtors also supply fuel to unrelated parties.

or fuel purchase orders (collectively, the "Fuel Supply Agreements"). Four of the Fuel Suppliers—Terpel SA, World Fuel Services, Puma Energy, and Repsol—accounted for 82% of the total volume of the Debtors' jet fuel purchases.

19. The Debtors cannot readily replace the fuel supplied by the Fuel Suppliers from any other supplier or suppliers on similar terms and conditions, because there are generally only one or two suppliers in substantially all South and Latin American airports—the Debtors' primary markets. Moreover, in some markets, the fuel supplier is government owned (*e.g.*, Petrobras is controlled by the Brazilian government).

20. On average, in a typical global economic environment, the Debtors spend $22 to $24 million per week on jet fuel. Prior to the COVID-19 shutdown, approximately 6% of the Debtors' fuel purchases had been effectuated by advance payment, and approximately 94% had been paid in arrears; since the pandemic shutdown, the numbers have flipped, and now 86% of fuel purchases are being effectuated by advance payment and 14% are being paid for in arrears.[4] The Debtors estimate that as of the Petition Date, they owe, in the aggregate, approximately $16.8 million to the Fuel Suppliers.

B. Into-Wing Service Contracts

21. While the Debtors maintain and deliver, on their own, a limited inventory of fuel, the Debtors primarily rely on third parties to store and transport fuel to their aircraft. The Debtors are party to certain into-wing fueling service contracts (the "Into-Wing Service Contracts"),

[4] The amounts owed to the Fuel Suppliers by the Debtors as of the Petition Date include amounts owed by the Debtors pursuant to certain deferred payment agreements. After the shutdown of most of the Debtors' flight operations on March 25, 2020, the Debtors agreed to pay the Fuel Suppliers on a current/advance payment basis for the fuel needed for their limited go-forward operations post-shutdown, and entered into deferred payment plans for any amounts owed as of that date, with some of such payments having already been made and others to be made after the Petition Date. During the period between April 27, 2020 and May 6, 2020, Avianca paid $13.1 million, in advance, for fuel, fuel services and fuel deposits. Of that amount, as of the Petition Date, approximately $6.3 million in fuel deposits remain unused and available for Avianca's future use.

pursuant to which third parties (the "Into-Wing Service Providers") either (i) arrange for the delivery of fuel to the Debtors' aircraft without any participation or involvement by the Debtors; or (ii) transport "airport fuel" from storage facilities located at or near airport terminals (by pipeline or vehicle) into the Debtors' aircraft. The Into-Wing Service Contracts generally have one-year or multi-year terms.

22. On average, the Debtors spend approximately $30,000 per week pursuant to the Into-Wing Service Contracts. The Debtors estimate that as of the Petition Date, they owe approximately $190,000 to the Into-Wing Service Providers on account of prepetition services provided pursuant to the Into-Wing Service Contracts.

C. Fuel Consortia and Other Arrangements

23. The Debtors have ownership interests in approximately five (5) fuel consortia and cooperatives (collectively, the "Fuel Consortia"), which lease, operate, and manage fuel storage facilities located at or near airports in which carriers and fuel suppliers store their fuel in one or more commingled fuel tanks. The Fuel Consortia are established by airlines to minimize and share the costs of local fuel storage. The Fuel Consortia are organized as separate corporations of which the Debtors are an equal-share owner with the other members. The Debtors' participation in the Fuel Consortia results in significant cost savings that would otherwise be unattainable. The Debtors can withdraw their stored fuel at such locations as needed and at any time.

24. The Fuel Consortia are run by third-party service providers (the "Fuel Consortia Service Providers") that are responsible for fuel system operations and maintenance, including all necessary accounting functions required to allocate costs to individual users. The Debtors and the other Fuel Consortia owners pay a fee to the Fuel Consortia Service Providers for their services. The Debtors estimate that as of the Petition Date, they owe approximately $80,000 to the Fuel Consortia Service Providers on account of prepetition services provided to the Fuel Consortia.

25. The Debtors are also party to certain other arrangements (the "Other Fuel Service Arrangements")[5] by which numerous third parties provide a variety of services to the Debtors in connection with the storage, purchase, sale, and delivery of fuel, including airport authority and facility-related, transportation, and brokerage services (the foregoing parties, together with the Fuel Suppliers, the Into-Wing Service Providers, and the Fuel Consortia Service Providers, the "Fuel Relationship Parties"). These services are all necessary for the Debtors to continue to buy, sell, transport, and store fuel, all of which are critically integral to numerous aspects of the Debtors' operations. In any operating environment, it is imperative that the Debtors be able to maintain these arrangements with the Fuel Relationship Parties.

BASIS FOR RELIEF REQUESTED

26. It is essential that the Debtors continue to have access to a ready supply of fuel and the services required to, among other things, store and transport such fuel to the Debtors' aircraft. Any disruption of this access would seriously undermine the Debtors' operations and their ability to reorganize. To that end, the Debtors request that the Court (i) authorize the Debtors to pay prepetition amounts owing to the Fuel Relationship Parties and to continue performing under related contracts; and (ii) authorize the Fuel Relationship Parties, subject to the prior written permission of the Debtors, to exercise their setoff and recoupment rights to apply any prepetition credits or prepayments toward the Debtors' outstanding obligations.

A. Payment of Prepetition Obligations

27. The Debtors respectfully request that this Court authorize them to pay any amounts owed to the Fuel Relationship Parties that were outstanding on the Petition Date. The Debtors

[5] The Debtors' fuel arrangement and Other Fuel Service Arrangements are subject to price variances. For instance, certain regulatory reforms in Colombia and Mexico may increase the Debtors' operating costs during these Chapter 11 Cases.

believe that this authority is critical to their continued business operations because such parties could not easily or quickly be replaced.

28. Pursuant to sections 105(a) and 363 of the Bankruptcy Code and the "necessity of payment doctrine" established by relevant case law, this Court has the authority to authorize the Debtors to pay prepetition claims of the Fuel Relationship Parties. See Miltenberger v. Logansport Ry. Co., 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent "stoppage of . . . [indispensable] business relations"). Moreover, 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.'") (citations omitted); 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").

29. 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, Inc., 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)). "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).

30. 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 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)).

31. Granting the Debtors authorization to pay prepetition claims of the Fuel Relationship Parties will enhance the likelihood of the Debtors' successful rehabilitation and maximize the value of their estates. Without their arrangements with the Fuel Relationship Parties, the Debtors would not have adequate access to fuel or the infrastructure through which to distribute it. As noted above, the Debtors' operations are focused in Latin and South America, where only one or two Fuel Suppliers may service a given airport. The Debtors will therefore not be able to replace their Fuel Suppliers in the event any of them refuse to supply jet fuel. Therefore, the

Debtors believe, in the exercise of their business judgment, that it is prudent to seek the relief requested herein.

32. Courts in this and other Districts have granted relief similar to that requested here. See, e.g., In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011); In re Mesa Air Grp., Inc., Case No. 10-10018 (MG) (Bankr S.D.N.Y. Jan. 26, 2010); In re Northwest Airlines Corp., Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Sept. 15, 2005). See also In re ATA Holdings Corp., Case No. 04-19866 (Bank S.D. Ind. Nov. 1, 2004); In re US Airways, Inc., Case No. 04-13819 (Bankr. E.D. Va. Sept. 14, 2004); In re Hawaiian Airlines, Inc., Case No. 03-00817 (Bankr. D. Haw. Mar. 21, 2003); In re UAL Corp., Case No 02-48191 (Bankr. N.D. Ill Dec. 11, 2002); In re Trans World Airlines, Inc., Case No. 01-00056 (Bankr. D. Del. Jan. 12, 2001).

B. Continued Participation and Performance Under Contracts

33. The Debtors respectfully request that this Court authorize the Debtors to continue performing under, and honoring and exercising their rights and obligations under, the existing contracts and arrangements with the Fuel Relationship Parties.

34. The Debtors believe that continuing to perform under these agreements falls within the purview of the Debtors' ordinary course of business. See Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne), 114 F.3d 379, 384 (2d Cir. 1997) ("The term 'ordinary course of business' generally has been accepted 'to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.'" (citation omitted)); In re Roth Am., Inc., 975 F.2d 949, 952 (3d Cir. 1992) ("The framework of section 363 is designed to allow a trustee (or debtor-in-possession) the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight . . ."); In re Coordinated Apparel, Inc., 179 B.R. 40, 43 (Bankr. S.D.N.Y. 1995) (holding that

entering into a contract for the manufacture of clothing was within the ordinary course of business of a debtor engaged in the business of manufacturing and distributing clothing).

35. The Debtors thus believe that they are authorized to continue performing under their existing contracts and arrangements with the Fuel Relationship Parties in the ordinary course, without further order of this Court, and request this relief in an abundance of caution.

36. Similar relief has been granted in other large chapter 11 cases concerning airlines. See, e.g., In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011); In re Northwest Airlines Corp., Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Sept. 15, 2005). See also In re US Airways, Inc., Case No. 04-13819 (Bankr. E.D. Va. Sep. 14, 2004); In re Hawaiian Airlines, Inc., Case No. 03-00817 (Bankr. D. Haw. Mar. 21, 2003); In re UAL Corp., Case No 02-48191 (Bankr. N.D. Ill Dec. 11, 2002); In re Trans World Airlines, Inc., Case No. 01-00056 (Bankr. D. Del. Jan. 12, 2001).

37. Nothing contained in this Motion should be construed as a request to assume or reject any executory contract or unexpired lease relating to the Debtors' various fuel relationships. Indeed, the Debtors reserve all of their rights to assume or reject such agreements in accordance with the applicable provisions of the Bankruptcy Code. Furthermore, the Debtors reserve the right to contest, on nonbankruptcy grounds or otherwise, any amount claimed to be due by any Fuel Relationship Party, and the Proposed Order should not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim of any Fuel Relationship Party on any grounds.

C. Application of Prepetition Payments to Postpetition Usage

38. The Debtors also respectfully request that the Court authorize the Fuel Relationship Parties to whom payments were made prepetition (or that have issued or hold prepetition credits) to apply, subject to the prior written permission of the Debtors, any unused prepayments or credits

to undisputed claims for services rendered after the Petition Date. Without authority from the Court for the Fuel Relationship Parties to apply prepetition prepayments or credits to undisputed claims relating to postpetition services, the Debtors' fuel supply and distribution system could be interrupted, and their business harmed.

39. The charges arising from the Debtors' postpetition fuel usage will likely be attributed administrative expense status. To the extent the Fuel Relationship Parties can utilize unused prepetition prepayments or credits to satisfy such administrative expense claims, the Debtors will benefit from the satisfaction of such administrative claims without having to affirmatively divert any value from the estate. Moreover, the Fuel Relationship Parties will be unharmed, as they will very likely be left in the position they would have been in had the prepayment not been received.

40. Accordingly, the Debtors request that, to the limited extent required, and subject to the prior written permission of the Debtors, the automatic stay under section 362 of the Bankruptcy Code be modified to allow the Fuel Relationship Parties to exercise their setoff and/or recoupment rights pursuant to section 553 of the Bankruptcy Code. To the extent these rights do, in actuality, qualify as rights of recoupment, rather than setoff, such rights should not be stayed in any event, and thus the requested relief does not require a modification of the automatic stay.

41. Courts in this district have freely granted similar relief in large chapter 11 cases concerning airlines dealing with similar arrangements. See, e.g., In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011); In re Northwest Airlines Corp., Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Sept. 15, 2005); In re Trans World Airlines, Inc., Case No. 01-00056 (Bankr. D. Del. Jan. 12, 2001) (PJW).

D. Honoring and Paying Checks Issued and Making Other Transfers to Fuel Supply Parties

42. The Debtors request that the Court authorize and direct the Debtors' banks and other financial institutions at which the Debtors maintain disbursement accounts to, at the Debtors' direction, receive, process, honor, and pay, to the extent of any 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 the Fuel Relationship Parties. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers on account of such obligations or 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

43. 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 as 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

44. 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.

45. 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.

46. As described herein, the Debtors' business operations are entirely dependent on the normal and regular supply of fuel, and it is fundamental to the Debtors' continued operations that their fuel purchase, delivery, storage, and other service arrangements continue uninterrupted. Notwithstanding the fact that the Debtors' passenger transport business has been grounded, the Debtors must obtain immediate authority to pay the Fuel Relationship Parties in order to avoid irreparable harm to their businesses. 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 where the Debtors operate. The Debtors also continue to perform certain "lead time" operations in anticipation of a modest near-term resumption of passenger flights—such as aircraft maintenance and ongoing flight training—to allow for passenger flights to timely resume when circumstances permit. All of the foregoing requires uninterrupted and ready access to fuel, and, thus, the relief requested herein is "necessary to avoid immediate and irreparable harm" to the Debtors' businesses and satisfies, thereby, Bankruptcy Rule 6003.

47. 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.

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

NOTICE

49. 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; (g) the Fuel Suppliers; (h) the counterparties to the Into-Wing Service Contracts, the members of the Fuel Consortia, Fuel Consortia Service Providers, and the participants in the Other Fuel Service Arrangements; and (i) 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

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

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter orders, substantially in the form of the Proposed Interim Order and Proposed Final 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
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

- and -

Gregory A. Bray
MILBANK LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000
Facsimile: (213) 629-5063

Proposed Counsel for Debtors and Debtors-in-Possession

Exhibit A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

INTERIM ORDER PURSUANT TO SECTIONS 105(a), 362 363, AND 553 OF THE BANKRUPTCY CODE (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY PREPETITION AMOUNTS OWING TO FUEL RELATIONSHIP PARTIES AND TO CONTINUE PERFORMING UNDER RELATED CONTRACTS, AND (II) AUTHORIZING THE FUEL RELATIONSHIP PARTIES TO EXERCISE THEIR SETOFF AND RECOUPMENT RIGHTS

Upon consideration of the motion (the "Motion")[2] of the above-captioned debtors and debtors-in-possession (the "Debtors"), seeking entry of an interim order (this "Interim Order") pursuant to sections 105(a), 362, 363, and 553 of the Bankruptcy Code: (i) authorizing (but not directing) the Debtors to pay prepetition amounts owing to the Fuel Relationship Parties and to continue performing under the related contracts and arrangements, (ii) authorizing the Fuel

[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.

Relationship Parties to, subject to the prior written permission of the Debtors, exercise their setoff and recoupment rights to apply any prepetition credits or prepayments toward the Debtors' outstanding obligations; and (iii) scheduling a final hearing (the "Final Hearing"); and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser in Support of the Debtors' Chapter 11 Petitions and First Day Orders*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED and approved in all respects on an interim basis.

2. The Final Hearing shall be held on _____, 2020, at__:__ _.m., prevailing Eastern Time. Any objections or responses to entry of the Propose Final Order shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2020, and shall be served on: (a) the Debtors; (b) proposed counsel to the Debtors; (c) counsel to any statutory committee appointed in these cases; and (d) the Office of the United States Trustee for the Southern District of New York.

In the event no objections to entry of the Proposed Final Order are timely received, this Court may enter the Final Order without need for the Final Hearing.

3. The Debtors are authorized (but not directed) to (i) pay undisputed prepetition amounts owing to the Fuel Relationship Parties; and (ii) continue performing under any related contracts and arrangements.

4. The automatic stay in effect pursuant to section 362(a) of the Bankruptcy Code is modified to the limited extent necessary to allow the Fuel Relationship Parties, subject to the prior written permission of the Debtors, to exercise their setoff and recoupment rights with respect to any credits or prepayments received from the Debtors.

5. The Debtors' banks and other financial institutions at which the Debtors maintain disbursement accounts are authorized to, at the Debtors' direction, receive, process, honor, and pay, to the extent of any 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 the Fuel Relationship Parties.

6. The Debtors are authorized to issue new checks, or effect new electronic fund transfers, on account of obligations owed to the Fuel Relationship Parties, and to replace any pre-petition 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.

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 Fuel Relationship Party on any grounds.

8. Nothing contained in this Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors-in-possession, of any executory contract or unexpired lease by virtue of reference of any such contract or lease in the Motion.

9. 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 dispute such obligation subsequently.

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

11. 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.

12. 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.

13. Notwithstanding any applicability of Bankruptcy Rule 6004, this Order is effective from the date of entry through this Court's disposition of the Motion on a final basis; provided that the Court's ultimate disposition of the Motion on the final basis shall not impair or otherwise affect any action taken pursuant to this Order.

14. The Debtors are authorized and empowered to take all actions necessary to implement the relief requested in this Order.

15. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: _____, 2020

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

FINAL ORDER PURSUANT TO SECTIONS 105(a), 362 363, AND 553 OF THE BANKRUPTCY CODE (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY PREPETITION AMOUNTS OWING TO FUEL RELATIONSHIP PARTIES AND TO CONTINUE PERFORMING UNDER RELATED CONTRACTS, AND (II) AUTHORIZING THE FUEL RELATIONSHIP PARTIES TO EXERCISE THEIR SETOFF AND RECOUPMENT RIGHTS

Upon consideration of the motion [Docket No. ___] (the "Motion")[2] of the above-captioned debtors and debtors-in-possession (the "Debtors"), seeking entry of a final order (this "I/nterim Order") pursuant to sections 105(a), 362, 363, and 553 of the Bankruptcy Code: (i) authorizing (but not directing) the Debtors to pay prepetition amounts owing to the Fuel Relationship Parties and to continue performing under the related contracts and arrangements, (ii)

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authorizing the Fuel Relationship Parties to, subject to the prior written permission of the Debtors, exercise their setoff and recoupment rights to apply any prepetition credits or prepayments toward the Debtors' outstanding obligations; and (iii) scheduling the Final Hearing; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser in Support of the Debtors' Chapter 11 Petitions and First Day Orders*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the Final Hearing; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED and approved in all respects on an interim basis.

2. The Debtors are authorized (but not directed) to (i) pay undisputed prepetition amounts owing to the Fuel Relationship Parties; and (ii) continue performing under any related contracts and arrangements.

3. The automatic stay in effect pursuant to section 362(a) of the Bankruptcy Code is modified to the limited extent necessary to allow the Fuel Relationship Parties, subject to the prior

written permission of the Debtors, to exercise their setoff and recoupment rights with respect to any credits or prepayments received from the Debtors.

4. The Debtors' banks and other financial institutions at which the Debtors maintain disbursement accounts are authorized to, at the Debtors' direction, receive, process, honor, and pay, to the extent of any 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 the Fuel Relationship Parties.

5. The Debtors are authorized to issue new checks, or effect new electronic fund transfers, on account of obligations owed to the Fuel Relationship Parties, and to replace any pre-petition 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.

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 Fuel Relationship Party on any grounds.

7. Nothing contained in this Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors-in-possession, of any executory contract or unexpired lease by virtue of reference of any such contract or lease in the Motion.

8. 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 dispute such obligation subsequently.

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

10. 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.

11. Notwithstanding any applicability of Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Debtors are authorized and empowered to take all actions necessary to implement the relief requested in this Order.

13. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: _____, 2020

_____
UNITED STATES BANKRUPTCY JUDGE