

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

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In re: : Chapter 11

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

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Debtors. : (Jointly Administered)

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**AMENDED INTERIM ORDER PURSUANT TO SECTIONS 105(a) AND 363 OF THE
BANKRUPTCY CODE (I) AUTHORIZING DEBTORS TO PAY OR HONOR
PREPETITION OBLIGATIONS TO CUSTOMERS, TRAVEL AGENTS, CHARTER
AND TOUR OPERATORS, AND CERTAIN OTHER BUSINESS ENTITIES;
(II) MODIFYING AUTOMATIC STAY TO THE EXTENT NECESSARY
TO EFFECTUATE ORDINARY COURSE SETOFFS WITH SUCH
COUNTERPARTIES; AND (III) GRANTING RELATED RELIEF**

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) and 363 of the Bankruptcy Code (i) authorizing (but not directing) the Debtors to pay or honor prepetition obligations to the Ordinary Course Counterparties, (ii) modifying the automatic stay to the extent necessary to effectuate setoffs with the Ordinary Course Counterparties, and (iii) granting certain related relief, all as described more fully in the Motion;

¹ The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Aero Transporte de Carga Unión, S.A. de C.V.; AeroInversiones de Honduras, S.A.; Aerovias del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Isleña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

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



and the 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 matter 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 Pleadings*, 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 on an interim basis.
2. The final hearing (the "Final Hearing") on the Motion shall be held on June 11, 2020, at 2:00 p.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on June 4, 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 a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to (i) pay, perform, and honor their obligations to the Ordinary Course Counterparties, as requested in the Motion, including but not limited to, those obligations arising before the Petition Date; and (ii) continue, renew, replace, and/or terminate, one or more of the programs and arrangements with the Ordinary Course Counterparties as they deem appropriate, in the ordinary course of business, without further application to the Court.

4. The Debtors are authorized, but not directed, to continue to receive, process, and honor credit card transactions and debit transactions and continue to pay processing and related fees to credit card companies, credit card processors, and debit service providers. The Debtors are further authorized, but not directed, to pay all Chargebacks along with the other fees related to credit card processing.

5. The Debtors are authorized, but not directed, to honor all Tickets and Vouchers issued by the Debtors and, with respect to Tickets and Vouchers issued by any of the Debtors' non-Debtor affiliates, to honor all such Tickets and Vouchers to the extent the Debtors determine in their business judgment that the failure to do so would result in reputational or other harm to their businesses.

6. The automatic stay in effect in these cases pursuant to section 362 of the Bankruptcy Code is hereby modified to the extent necessary to permit (i) the travel agents, ARC, and BSPs to follow their normal setoff and processing procedures in respect of undisputed claims; (ii) the cargo sales agencies to follow their normal setoff procedures in respect of undisputed obligations; and (iii) the netting of the Chargebacks, in each case, in the ordinary course as if no bankruptcy filing had occurred. 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.

7. The Debtors are authorized (but not required) to condition any payments on account of prepetition obligations to the Ordinary Course Counterparties on their continuing to provide the Debtors with the On-Going Obligations/Terms as follows:

- a. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the Ordinary Course Counterparties on the condition that, by accepting payment, each Ordinary Course Counterparty agrees to maintain, reinstate, or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases;
- b. The acceptance of payment by an Ordinary Course Counterparty is deemed to be its acceptance of the terms of this Order, and if the Ordinary Course Counterparty thereafter fails to provide the Debtors with, or otherwise comply with, the On-Going Obligations/Terms during the pendency of these cases, then any payments made to such Ordinary Course Counterparty after the Petition Date on account of a prepetition claim shall be deemed to be an unauthorized postpetition transfer, automatically recoverable by the Debtors; and
- c. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from the Ordinary Course Counterparties before making any payments authorized hereby; provided that the absence of such written verification shall not limit the Debtors' rights hereunder.

8. This Order shall not, however, be construed to limit, or in any way affect, the Debtors' ability to contest any claim, invoice, or other charge of any customer or another Ordinary Course Counterparty on any grounds.

9. All applicable banks and other financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks and electronic funds transfer requests from the Debtors' accounts to customers and/or the other Ordinary Course Parties, whether those checks were presented or funds transfer requests initiated prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

10. Nothing contained in this Order shall constitute a rejection or assumption by the Debtors of any executory contract or unexpired lease by virtue of reference of any such contract or lease in the Motion.

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 dispute such obligation subsequently.

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

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

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

IT IS SO ORDERED.

Dated: May 14, 2020

New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge