

**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., <i>et al.</i> , ¹	: Case No. 20-11133 (MG)
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Debtors.	: (Jointly Administered)
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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 (the “Motion”)² of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of a final order (this “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 the Fuel Relationship Parties and to continue performing under the related contracts and arrangements, and (ii) authorizing the Fuel Relationship

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.



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 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 to the extent set forth herein on a final basis.
2. Subject to the terms of this Final Order, 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 in an aggregate amount not to exceed \$17 million (the "Payment Cap"); provided, that the Debtors shall provide the Official Committee of Unsecured Creditors (the "Committee") with at least five (5) business days' prior

notice (or as much notice as is reasonably practicable under the circumstances) prior to making one or more related payments that are in excess of \$200,000 in the aggregate to any single Fuel Relationship Party on account of its prepetition claims.

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 Fuel Relationship Parties in excess of the Payment Cap.

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 (with notice to the Committee), 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 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.

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. The Debtors shall maintain a matrix summarizing the estimated aggregate payout amount related to the prepetition amounts owing to each Fuel Relationship Party, the payments made to each Fuel Relationship Party, and shall provide such matrix on a monthly basis to the Committee's professionals. The rights of the Committee to seek (a) additional disclosures from the Debtors, including disclosures regarding the terms of any payment to a Fuel Relationship Party, and (b) to avoid and recover any payment made by the Debtors to any Fuel Relationship Party, respectively, are expressly reserved and shall not be prejudiced by entry of the Interim Order or this Final Order.

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

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.

IT IS SO ORDERED.

Dated: June 9, 2020
New York, New York

Martin Glenn

MARTIN GLENN
United States Bankruptcy Judge