

**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)
	:
Debtors.	: (Jointly Administered)
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**STIPULATION AND ORDER AUTHORIZING DEBTORS TO
REJECT CERTAIN UNEXPIRED LEASES WITH AIRCRAFT
COUNTERPARTIES AND TO ABANDON CERTAIN AIRCRAFT**

The debtors in the above-captioned cases (the “Debtors”) and the undersigned parties to this stipulation (collectively, the “Aircraft Counterparties”) with respect to the aircraft finance and/or lease transactions relating to the aircraft leases and subleases (the “Leases”) and related documents set forth in **Exhibit A** (collectively with the Leases, the “Aircraft Agreements”) in respect of the aircraft listed in **Exhibit A** hereto, along with the airframes, engines, related equipment and/or other equipment, documents, and records with respect to the Leases (collectively, the “Aircraft Equipment”) that are subject to *Debtors’ First Omnibus Motion for An*

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.



Order Authorizing them to (I) Reject Certain Aircraft Leases and (II) Abandon Certain Aircraft, [Dkt. No. 21] (the “Aircraft Rejection Motion”), by and through their respective counsel, hereby enter into this stipulation, agreement and proposed order (this “Stipulation”) and represent and agree as follows:

A. On May 10, 2020 (the “Petition Date”), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code.

B. On May 10, 2020, the Debtors filed the Aircraft Rejection Motion, seeking to reject or abandon the Aircraft Equipment, *nunc pro tunc* to May 10, 2020. The Aircraft Rejection Motion provides that the Debtors will return the Aircraft Equipment to the Aircraft Counterparties in accordance with the procedures set forth in the Aircraft Rejection Motion.

C. The Debtors and the Aircraft Counterparties now wish to agree to the rejection of the Leases and/or abandonment of the relevant Aircraft Equipment identified on Exhibit A, with such rejection and/or abandonment to be effective as of May 10, 2020, and to defer all disputes (if any) concerning: (a) the amount of any damages resulting from the rejection of the leases and/or abandonment of the relevant Aircraft Equipment, (b) the priority of any claim that any Aircraft Counterparty may have, including the entitlement to any administrative expense claim, as a result of the rejection of the leases and/or abandonment of the relevant Aircraft Equipment, and (c) the nature of the underlying transaction between the Debtors and the Aircraft Counterparties.

D. This Stipulation shall serve as notice of a consensual resolution to the Aircraft Rejection Motion as between the Debtors and the Aircraft Counterparties.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT IS HEREBY STIPULATED AND AGREED, BY AND AMONG THE PARTIES, THROUGH THEIR

UNDERSIGNED COUNSEL, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. Pursuant to section 365 of the Bankruptcy Code and subject to the terms of this Stipulation, the Leases and other agreements listed on **Exhibit A** hereto are hereby rejected, effective as of May 10, 2020 (the "Rejection Date").

2. The Debtors shall, at the Aircraft Counterparties' expense payable in advance, (i) deliver the Aircraft Equipment (expressly including the original engines listed on **Exhibit A** hereto) to the Aircraft Counterparties at a location permitted under the Aircraft Agreements or such other location mutually acceptable to the Debtors and the Aircraft Counterparties, (ii) as soon as reasonably practicable, deliver to the Aircraft Counterparties all technical records and documents relating to such Aircraft Equipment that are in the Debtors' possession or control including the records and documents identified in Schedule A, and (iii) cooperate in taking all actions, including locating and/or identifying records and documents relating to the Aircraft Equipment (including burn certificates, as applicable), and signing all documents reasonably required by the Aircraft Counterparties with regard to the return of the Aircraft Equipment to the Aircraft Counterparties, including lease termination, the transfer of title, and its deregistration and export from the current state of registration or country of previous importation and issuing a statement, with exceptions, where the Debtor as current operator confirms it has maintained the relevant Aircraft Equipment as per the applicable FAA regulations and such Aircraft Equipment is in an airworthy condition at the time of transfer of such Aircraft Equipment to the Aircraft Counterparties as evidenced by its Standard Certificate of Airworthiness, in each case, to the extent applicable. The delivery of the Aircraft Equipment in respect of that certain Airbus model A321-231 aircraft bearing manufacturer's serial number 6294 shall occur on a mutually acceptable date on or before June 13, 2020, or such later date as may be

mutually agreed in writing by the Debtors and the Aircraft Counterparties (the “MSN 6294 Outside Date”). The delivery of all remaining Aircraft Equipment shall occur on a mutually acceptable date on or before June 30, 2020, or such later date as may be mutually agreed in writing by the Debtor and the Aircraft Counterparties (the “MSNs 1357, 1378 and 6009 Outside Date”); collectively referred to with the MSN 6294 Outside Date as each an “Outside Date”).

3. Notwithstanding anything to the contrary in any of the Aircraft Agreements, the Debtors shall maintain existing insurance coverage and continue the existing storage maintenance program as to the Aircraft Equipment until the earlier of (i) the date on which the Debtors deliver the Aircraft Equipment to the Aircraft Counterparties, or (ii) the applicable Outside Date, and after such earlier date, the Debtors shall have no further obligations of any kind to maintain insurance coverage or continue any storage maintenance program as to the Aircraft Equipment.

4. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified to permit the Aircraft Counterparties to take possession, transfer, move, or otherwise dispose of the Aircraft Equipment.

5. Claims arising out of the rejection of the Aircraft Agreements, if any, must be filed on or before the later of (i) the deadline for filing proofs of claim established in these chapter 11 cases, and (ii) 30 days after the entry of an order approving this Stipulation. If no proof of claim is timely filed, the Aircraft Counterparties shall be forever barred from asserting a claim for damages arising from the rejection and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

6. Notwithstanding anything to the contrary herein, or the execution and filing of any documents, including any terminations of the Aircraft Agreements, necessary in connection

with the return of the Aircraft Equipment to the Aircraft Counterparties, all of the Aircraft Counterparties' rights and claims under the Aircraft Agreements are fully preserved, including (i) the right to assert any administrative expense claims, and (ii) the right to assert any claims related to the rejection of the Aircraft Agreements and the return of the Aircraft Equipment including claims for reimbursement of expenses referenced in paragraph 2 above. The Debtors reserve and retain all of their defenses and rights to object to or otherwise challenge all such claims.

7. Notwithstanding the terms of this Stipulation 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.

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

9. This Stipulation may be changed, modified, or otherwise altered in a writing executed by the Parties to this Stipulation. Oral modifications are not permitted.

10. This Stipulation contains the entire agreement between the parties with respect to the subject matter hereof, and may only be modified in writing, signed by the parties or their duly appointed agents.

11. This Stipulation may be executed in one or more counterparts, by facsimile, electronic transmission or otherwise, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

12. This Stipulation shall be effective immediately upon approval by the Court.

The Court shall retain jurisdiction for purposes of resolving any issues relating to this Stipulation.

IT IS SO ORDERED.

Dated: June 11, 2020
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

Dated: New York, New York
June 5, 2020

Stipulated and agreed to by:

AVIANCA HOLDINGS S.A., et al., debtors and
debtors-in-possession

By: /s/ Gregory Bray

Dennis F. Dunne
Evan R. Fleck
MILBANK LLP
55 Hudson Yards
New York, New York 10001
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-and-

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

APF 3 PROJEKT NR. 2 GMBH, as Lessor

By:  _____

Name: Christian Schloemann

Title: Managing Director

By:  _____

Name: Kathrin Düker

Title: Managing Director

APF 1 PROJEKT NR. 11 GMBH, as Lessor

By:  _____

Name: Christian Schloemann

Title: Managing Director

By:  _____

Name: Kathrin Düker

Title: Managing Director

APF 4 PROJEKT NR. 7A GMBH, as Lessor

By:  _____

Name: Christian Schloemann

Title: Managing Director

By:  _____

Name: Kathrin Düker

Title: Managing Director

APF 4 PROJEKT NR. 7B GMBH, as Lessor

By:  _____

Name: Christian Schloemann

Title: Managing Director

By:  _____

Name: Kathrin Düker

Title: Managing Director

NORDDEUTSCHE LANDESBANK
GIROZENTRALE, as Security Trustee

By: 

Name: **Krentz**

Title: **Authorised Signatory**

By: 

Name: **Anja Rother**

Title: **Authorised Signatory**

EXHIBIT A

Lessee and Sublessor

Wells Fargo Trust Company, National Association, not in its individual capacity but solely as owner trustee, as Lessee and Sublessor with respect to each of MSN 1357, MSN 1378, MSN 6009 and MSN 6294

Aircraft Counterparties

1. APF 3 Projekt Nr. 2 GmbH, as Lessor with respect to MSN 1357
2. APF 1 Projekt Nr. 11 GmbH, as Lessor with respect to MSN 1378
3. APF 4 Projekt Nr. 7A GmbH, as Lessor with respect to MSN 6009
4. APF 4 Projekt Nr. 7B GmbH, as Lessor with respect to MSN 6294
5. Norddeutsche Landesbank Girozentrale, as Security Trustee with respect to MSN 1357, MSN 1378, MSN 6009 and MSN 6294

Aircraft

1. One (1) Airbus model A330-343 aircraft bearing manufacturer's serial number 1357 and U.S. Registration Mark N803AV and two (2) Rolls-Royce PLC model RB211 Trent 772B-60 aircraft engines bearing manufacturer's serial numbers 42122 and 42150 (“**MSN 1357**”).
2. One (1) Airbus model A330-343 aircraft bearing manufacturer's serial number 1378 and U.S. Registration Mark N804AV and two (2) Rolls-Royce PLC model RB211 Trent 772B-60 aircraft engines bearing manufacturer's serial numbers 42149 and 42124 (“**MSN 1378**”).
3. One (1) Airbus model A321-231 aircraft bearing manufacturer's serial number 6009 and U.S. Registration Mark N805AV and two (2) International Aero Engines AG (IAE) model V2533-A5 aircraft engines bearing manufacturer's serial numbers V17136 and V17137 (“**MSN 6009**”).
4. One (1) Airbus model A321-231 aircraft bearing manufacturer's serial number 6294 and U.S. Registration Mark N810AV and two (2) International Aero Engines AG (IAE) model V2533-A5 aircraft engines bearing manufacturer's serial numbers V17436 and V17441 (“**MSN 6294**”).

Aircraft Agreements

- A. International Aircraft Lease Agreement dated as of December 28, 2017 (the “**1357 Lease**”) between APF 3 Projekt Nr. 2 GmbH, as lessor, and Wells Fargo Trust Company, National Association (formerly Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as lessee, and each other Operative Document

(as defined in the 1357 Lease) executed in connection with the 1357 Lease, each as amended, supplemented or otherwise modified from time to time.

- B. International Aircraft Sublease Agreement dated as of December 28, 2017 (the “**1357 Sublease**”) between Wells Fargo Trust Company, National Association (formerly Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as sublessor, Aerovías del Continente Americano S.A. Avianca, as sublessee, and each other Operative Document (as defined in the 1357 Sublease) executed in connection with the 1357 Sublease, each as amended, supplemented or otherwise modified from time to time.
- C. Guaranty dated as of December 28, 2017 by Avianca Holdings S.A., as guarantor, in favor of APF 3 Projekt Nr. 2 GmbH, as head lessor with respect to MSN 1357.
- D. Guaranty dated as of December 28, 2017 by Aerovías del Continente Americano S.A. Avianca, as guarantor, in favor of APF 3 Projekt Nr. 2 GmbH, as head lessor with respect to MSN 1357.
- E. International Aircraft Lease Agreement dated as of December 28, 2017 (the “**1378 Lease**”) between APF 1 Projekt Nr. 11 GmbH, as lessor, and Wells Fargo Trust Company, National Association (formerly Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as lessee, and each other Operative Document (as defined in the 1378 Lease) executed in connection with the 1378 Lease, each as amended, supplemented or otherwise modified from time to time.
- F. International Aircraft Sublease Agreement dated as of December 28, 2017 (the “**1378 Sublease**”) between Wells Fargo Trust Company, National Association (formerly Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as sublessor, Aerovías del Continente Americano S.A. Avianca, as sublessee, and each other Operative Document (as defined in the 1378 Sublease) executed in connection with the 1378 Sublease, each as amended, supplemented or otherwise modified from time to time.
- G. Guaranty dated as of December 28, 2017 by Avianca Holdings S.A., as guarantor, in favor of APF 1 Projekt Nr. 11 GmbH, as head lessor with respect to MSN 1378.
- H. Guaranty dated as of December 28, 2017 by Aerovías del Continente Americano S.A. Avianca, as guarantor, in favor of APF 1 Projekt Nr. 11 GmbH, as head lessor with respect to MSN 1378.
- I. International Aircraft Lease Agreement dated as of December 28, 2017 (the “**6009 Lease**”) between APF 4 Projekt Nr. 7A GmbH, as lessor, and Wells Fargo Trust Company, National Association (formerly Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as lessee, and each other Operative Document (as defined in the 6009 Lease) executed in connection with the 6009 Lease, each as amended, supplemented or otherwise modified from time to time.
- J. International Aircraft Sublease Agreement dated as of December 28, 2017 (the “**6009 Sublease**”) between Wells Fargo Trust Company, National Association (formerly Wells Fargo

Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as sublessor, Aerovías del Continente Americano S.A. Avianca, as sublessee, and each other Operative Document (as defined in the 6009 Sublease) executed in connection with the 6009 Sublease, each as amended, supplemented or otherwise modified from time to time.

- K. Guaranty dated as of December 28, 2017 by Avianca Holdings S.A., as guarantor, in favor of APF 4 Projekt Nr. 7A GmbH, as head lessor with respect to MSN 6009.
- L. Guaranty dated as of December 28, 2017 by Aerovías del Continente Americano S.A. Avianca, as guarantor, in favor of APF 4 Projekt Nr. 7A GmbH, as head lessor with respect to MSN 6009.
- M. International Aircraft Lease Agreement dated as of December 28, 2017 (the “**6294 Lease**”) between APF 4 Projekt Nr. 7B GmbH, as lessor, and Wells Fargo Trust Company, National Association (formerly Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as lessee, and each other Operative Document (as defined in the 6294 Lease) executed in connection with the 6294 Lease, each as amended, supplemented or otherwise modified from time to time.
- N. International Aircraft Sublease Agreement dated as of December 28, 2017 (the “**6294 Sublease**”) between Wells Fargo Trust Company, National Association (formerly Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as sublessor, Aerovías del Continente Americano S.A. Avianca, as sublessee, and each other Operative Document (as defined in the 6294 Sublease) executed in connection with the 6294 Sublease, each as amended, supplemented or otherwise modified from time to time.
- O. Guaranty dated as of December 28, 2017 by Avianca Holdings S.A., as guarantor, in favor of APF 4 Projekt Nr. 7B GmbH, as head lessor with respect to MSN 6294.
- P. Guaranty dated as of December 28, 2017 by Aerovías del Continente Americano S.A. Avianca, as guarantor, in favor of APF 4 Projekt Nr. 7B GmbH, as head lessor with respect to MSN 6294.

Schedule A

Records and Documents

The records and documents set forth below with respect to each of MSN 1357, MSN 1378, MSN 6009 and MSN 6294, except as otherwise noted below.

Airframe physical documents:	
Certificates:	All HT-components
	All OCCM-component
Checks & SV	All Check packages (e.g. A, C, 6Y-Checks)
	All LDG OH packages
	All Engine SV packages
	Aircraft painting reports
Logbooks	Aircraft Logbook (Techlogs, Flight logs, Cabin logs etc.)
	APU-Logbook
	Engine Logbooks (if available)
Certificates & Licenses	CofA original
	CofR original
	Noise Cert.
	Radio license
	In lieu of an export CofA, a statement, with exceptions, issued by the Debtor as current operator confirming it has maintained the Aircraft as per the applicable FAA regulations and it is in airworthy condition at the time of transfer of such Aircraft to the Aircraft Counterparties as evidenced by its Standard Certificate of Airworthiness
Previous Operator:	Entire TransAsia documentation
Hard-copies:	Entire hardcopy documentation should be on the aircraft
Electronic copies:	All which is electronical available should be on a sharepoint
After applicable Ferry flight	
Statements certified:	AD-Status & AMOCs
	SB-Status
	Mod. Status
	STC-Status (incl. ICAs)
	FH & FC Statement (Airframe/Engines/LDG/APU)
	LDND Status for AMP Tasks
	HT-component status
	OCCM component Status
	Aircraft Check Status (A, C-Check)
	Engine LLP Status
	APU LLP Status (only for MSN 6009 and MSN 6294)
	LDG LLP Status

	NIS (Airframe/Engines/LDG/APU)
	Dent & Buckle (Repair) - chart (incl. Listing)
	Non PMA and DER Statement
	Non-DER/DOA Repairs Statement
	Fluid Statement (Fluids, Oil used)
Additional Documents:	ELA (Avianca) actual
	AMP actual
	AFM (only for MSN 6009 and MSN 6294)
	EFB content (electronic copy)
	last weighing report from MSN 1357
	ETOPS documentation
	De-Registration certificate
	last DFDR analysis
	Engine EGT reports