

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

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: In re: : Chapter 11
: :
: AVIANCA HOLDINGS S.A., *et al.*,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 RETURN AND/OR ABANDON CERTAIN AIRCRAFT,
AS APPLICABLE**

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 the return and/or abandonment, as applicable, by the Debtors 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 any claim or right that any Aircraft Counterparty may have, including, without limitation, the entitlement to any administrative expense claim, that arises out of or relates to the Aircraft Agreements or the Aircraft Equipment.

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 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 mutually acceptable to the Debtors and the Aircraft Counterparties, (ii) store all technical records and documents relating to any Aircraft Equipment that are in the Debtor’s possession or control in the cargo compartments of another Aircraft Equipment on or prior to the delivery of such other Aircraft Equipment; *provided* that if the capacity of such cargo compartments is insufficient to store all such technical records and documents, the Debtors shall separately thereafter as promptly as practicable return such remaining technical records and documents to the Aircraft Counterparties, and (iii) cooperate in taking all actions 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, in each case, to the extent applicable. The delivery of the Aircraft Equipment shall occur on a mutually acceptable date on or before July 15, 2020 or such later date as may be mutually agreed in writing by the Debtor and the Aircraft Counterparties (the “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 Outside Date, and

after such earlier date, the Debtors shall have no further obligations of any kind under the related Leases, including the maintenance of insurance coverage or the continuance of any storage maintenance program as to the Aircraft Equipment, and the Aircraft Counterparties shall pay or reimburse the Debtors for any costs and expenses incurred after the return of any Aircraft Equipment or the Outside Date, as applicable, including, without limitation, cost and expenses relating to parking or permits for the relevant Aircraft Equipment. The Debtors shall deliver the Aircraft Equipment to the Aircraft Counterparties in a condition at least eligible for issuance of a special ferry flight permit relating to such 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 and to (a) terminate the leasing of the relevant Aircraft Equipment under the Leases; and (b) claim and demand the Final Payment (as defined in the relevant All Parties Agreement set forth in Exhibit A) from the Debtor under the terms of the relevant Aircraft Agreements to the extent necessary to terminate any Interest Rate Swap (as defined in such All Parties Agreement) entered into in connection therewith.

5. Any claims arising out of the Aircraft Equipment or the Aircraft Agreements must be filed on or before the latest of (i) the deadline for filing proofs of claim established in these chapter 11 cases, (ii) 30 days after the entry of an order approving this Stipulation and (iii) August 14, 2020. If no proof of claim is timely filed, the Aircraft Counterparties shall be forever barred from asserting a claim against the Debtors or the Debtors' estate and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

6. Subject to paragraph 5 above, all of the Aircraft Counterparties' rights and any claim that any Aircraft Counterparty may have, including, without limitation, the entitlement to any administrative expense claim, that arises out of or relates to the Aircraft Agreements or the Aircraft Equipment, are fully preserved. The Debtors reserve and retain all of their defenses and rights to object to or otherwise challenge all such claims.

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

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

9. 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.

10. 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.

11. 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
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-and-

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Facsimile: (213) 629-5063

WELLS FARGO TRUST COMPANY, NATIONAL
ASSOCIATION, not in its individual capacity but
solely as owner trustee, as Lessor

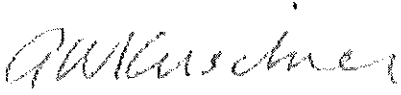
By: Kim Chandler

Name:

Kim Chandler
Vice President

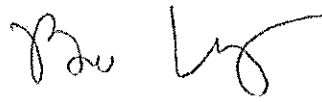
Title:

BNP PARIBAS, ACTING THROUGH ITS NEW
YORK BRANCH, as Security Agent

By: 

Name: Amy Kirschner

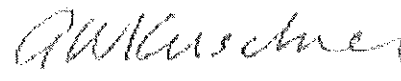
Title: Managing Director

By: 

Name: Bo Wang

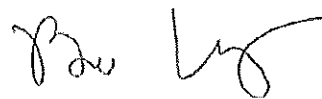
Title: Vice President

BNP PARIBAS, ACTING THROUGH ITS NEW
YORK BRANCH, as Lender

By: 

Name: Amy Kirschner

Title: Managing Director

By: 

Name: Bo Wang

Title: Vice President

EXHIBIT A

Aircraft Counterparties

1. Wells Fargo Trust Company, National Association (formerly known as Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as Lessor
2. BNP Paribas, acting through its New York branch, as Security Agent and Lender

Aircraft

1. One (1) ATR model 72-212A (also known as a model 72-600) aircraft bearing manufacturer's serial number 1199 and Colombian Registration Mark HK-5323 and two (2) Pratt & Whitney Canada model PW100 aircraft engines bearing manufacturer's serial numbers PCE-ED0977 and PCE-ED0975
2. One (1) ATR model 72-212A (also known as a model 72-600) aircraft bearing manufacturer's serial number 1172 and Colombian Registration Mark HK-5325 and two (2) Pratt & Whitney Canada model PW100 aircraft engines bearing manufacturer's serial numbers PCE-ED0916 and PCE-ED0912
3. One (1) ATR model 72-212A (also known as a model 72-600) aircraft bearing manufacturer's serial number 1231 and Colombian Registration Mark HK-5109 and two (2) Pratt & Whitney Canada model PW100 aircraft engines bearing manufacturer's serial numbers PCE-ED1006 and PCE-ED1002
4. One (1) ATR model 72-212A (also known as a model 72-600) aircraft bearing manufacturer's serial number 1196 and Colombian Registration Mark HK-5324 and two (2) Pratt & Whitney Canada model PW100 aircraft engines bearing manufacturer's serial numbers PCE-ED0940 and PCE-ED0957

Aircraft Agreements

- A. Aircraft Lease Agreement, dated as of June 10, 2019 (the “**1199 Lease**”), between Wells Fargo Trust Company, National Association (formerly known as Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as lessor and Aerovías del Continente Americano S.A. Avianca, as lessee, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1199 Lease) executed in connection with the 1199 Lease.
- B. Aircraft Sublease Agreement dated June 10, 2019 (the “**1199 Sublease**”) between Aerovías del Continente Americano S.A. Avianca, as sublessor, and Regional Express Americas S.A.S., as sublessee, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1199 Sublease) executed in connection with the 1199 Sublease.

- C. All Parties Agreement dated December 30, 2014 (the "**1199 All Parties Agreement**") among Aerovías del Continente Americano S.A. Avianca, as lessee, Wells Fargo Trust Company, National Association (formerly known as Wells Fargo Bank Northwest, National Association), as borrower and lessor, Turbo Aviation Three S.A., as owner participant, Well Fargo Trust Company, National Association, as trust company, various financial institutions as original enders and BNP Paribas as security agent and facility agent, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1199 All Parties Agreement) executed in connection with the 1199 All Parties Agreement.
- D. Aircraft Lease Agreement, dated as of February 14, 2020 (the "**1172 Lease**"), between Wells Fargo Trust Company, National Association (formerly known as Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as lessor and Aerovías del Continente Americano S.A. Avianca, as lessee, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1172 Lease) executed in connection with the 1172 Lease.
- E. Aircraft Sublease Agreement dated February 14, 2020 (the "**1172 Sublease**") between Aerovías del Continente Americano S.A. Avianca, as sublessor, and Regional Express Americas S.A.S., as sublessee, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1172 Sublease) executed in connection with the 1172 Sublease.
- F. All Parties Agreement dated March 12, 2015 (the "**1172 All Parties Agreement**") among Aerovías del Continente Americano S.A. Avianca, as lessee, Wells Fargo Trust Company, National Association (formerly known as Wells Fargo Bank Northwest, National Association), as borrower and lessor, Turbo Aviation Three S.A., as owner participant, Well Fargo Trust Company, National Association, as trust company, various financial institutions as original enders and BNP Paribas as security agent and facility agent, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1172 All Parties Agreement) executed in connection with the 1172 All Parties Agreement.
- G. Aircraft Lease Agreement, dated as of February 11, 2015 (the "**1231 Lease**"), between Wells Fargo Trust Company, National Association (formerly known as Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as lessor and Aerovías del Continente Americano S.A. Avianca, as lessee, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1231 Lease) executed in connection with the 1231 Lease.
- H. Aircraft Sublease Agreement dated March 18, 2019 (the "**1231 Sublease**") between Aerovías del Continente Americano S.A. Avianca, as sublessor, and Regional Express Americas S.A.S., as sublessee, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1231 Sublease) executed in connection with the 1231 Sublease.

- I. All Parties Agreement dated February 11, 2015 (the "**1231 All Parties Agreement**") among Aerovías del Continente Americano S.A. Avianca, as lessee, Wells Fargo Trust Company, National Association (formerly known as Wells Fargo Bank Northwest, National Association), as borrower and lessor, Turbo Aviation Three S.A., as owner participant, Well Fargo Trust Company, National Association, as trust company, various financial institutions as original enders and BNP Paribas as security agent and facility agent, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1231 All Parties Agreement) executed in connection with the 1231 All Parties Agreement.
- J. Aircraft Lease Agreement, dated as of May 29, 2019 (the "**1196 Lease**"), between Wells Fargo Trust Company, National Association (formerly known as Wells Fargo Bank Northwest, National Association), not in its individual capacity but solely as owner trustee, as lessor and Aerovías del Continente Americano S.A. Avianca, as lessee, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1196 Lease) executed in connection with the 1196 Lease.
- K. Aircraft Sublease Agreement dated May 29, 2019 (the "**1196 Sublease**") between Aerovías del Continente Americano S.A. Avianca, as sublessor, and Regional Express Americas S.A.S., as sublessee, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1196 Sublease) executed in connection with the 1196 Sublease.
- L. All Parties Agreement dated December 30, 2014 (the "**1196 All Parties Agreement**", and together with the 1199 All Parties Agreement, the 1231 All Parties Agreement and the 1196 All Parties Agreement, each an "**All Parties Agreement**") among Aerovías del Continente Americano S.A. Avianca, as lessee, Wells Fargo Trust Company, National Association (formerly known as Wells Fargo Bank Northwest, National Association), as borrower and lessor, Turbo Aviation Three S.A., as owner participant, Well Fargo Trust Company, National Association, as trust company, various financial institutions as original enders and BNP Paribas as security agent and facility agent, as amended and supplemented from time to time, and each other Transaction Document (as defined in the 1196 All Parties Agreement) executed in connection with the 1196 All Parties Agreement.