

Presentment Date and Time: January 26, 2021 at 12:00 p.m. (prevailing Eastern Time)
Objection Deadline: January 25, 2021 at 4:00 p.m. (prevailing Eastern Time)

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**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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**NOTICE OF PRESENTMENT OF AMENDED FINAL ORDER
AUTHORIZING (A) DEBTORS TO PAY PREPETITION CLAIMS OF FOREIGN
CREDITORS; AND (B) FINANCIAL INSTITUTIONS TO HONOR
AND PROCESS RELATED CHECKS AND TRANSFERS**

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); AV Loyalty Bermuda Ltd. (N/A); Aviacorp Enterprises S.A. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



PLEASE TAKE NOTICE (this “Notice”) that, on May 10, 2020, the Debtors filed the *Motion for Interim and Final Orders (A) Authorizing Debtors to Pay Prepetition Claims of Foreign Vendors; and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* [Docket No. 6] (the “Foreign Vendors Motion”).

PLEASE TAKE FURTHER NOTICE that, on May 12, 2020, the Court entered an order granting the Foreign Vendors Motion on an interim basis [Docket No. 36] (the “Interim Foreign Vendors Order”), and on June 9, 2020, entered an order granting the Foreign Vendors Motion on a final basis [Docket No. 248] (the “Foreign Vendors Order”). The Foreign Vendors Order authorizes the Debtors to, among other things, pay the prepetition obligations owed to Foreign Creditors.² The Foreign Creditors provide a wide array of goods and services to the Debtors, as set forth in greater detail in the Foreign Services Motion, including: maintenance services, ground handling, in-flights goods and services, and flight communications and information technologies services.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Foreign Vendors Order, the Payment Cap under the Foreign Services Motion is \$23 million.

PLEASE TAKE FURTHER NOTICE that the Debtors hereby seek to amend the Payment Cap under the Foreign Services Motion to \$50 million (the “Amended Payment Cap”), to account for the fact that the current Payment Cap has proven undersized.

PLEASE TAKE FURTHER NOTICE that the Office of the United States Trustee and the Official Committee of Unsecured Creditors (the “Committee”) have been consulted regarding this relief. The Committee has no objection to the Amended Payment Cap or to entry of the Amended Order.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Foreign Vendors Motion.

PLEASE TAKE FURTHER NOTICE that an amended proposed Foreign Vendors Order and redline against the original Foreign Vendors Order is annexed hereto as **Annex A** (the “Amended Order”), which will be presented for signature to the Honorable Judge Martin Glenn, United States Bankruptcy Judge for the Southern District of New York (the “Court”), Room 501, One Bowling Green, New York, New York, 10004 on **January 26, 2021 at 12:00 p.m.** (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that any objections or responses to the Amended Order shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York, and the *Order Implementing Certain Notice and Case Management Procedures* [Docket No. 47] (the “Case Management Order”); (c) be filed electronically with this Court on the docket of *In re Avianca Holdings S.A.*, Case 20-11133 (MG) by registered users of this Court’s electronic filing system and in accordance with the General Order M-399 (which is available on this Court’s website at <http://www.nysb.uscourts.gov>) by **January 25, 2021 at 4:00 p.m., prevailing Eastern Time (the “Objection Deadline”)**; and (d) be promptly served on the following parties: (i) the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (ii) the Debtors, c/o Richard Galindo (richard.galindo@avianca.com); (iii) Milbank LLP (Attn: Evan R. Fleck, Esq. and Gregory A. Bray, Esq. (efleck@milbank.com and gbray@milbank.com)), counsel for the Debtors; (iv) Morrison & Foerster LLP (Attn: Brett H. Miller, Esq. and Todd M. Goren, Esq. (brettmiller@mof.com and tgoren@mof.com)), counsel to the Committee; (v) William K. Harrington, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Brian Masumoto, Esq. and Greg Zipes, Esq.); (vi) the

Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549; (vii) the Federal Aviation Administration, 800 Independence Ave., S.W. Washington, DC 20591 (Attn: Office of the Chief Counsel); and (viii) the attorneys for any other official committee(s) that may be appointed in these Chapter 11 Cases.

PLEASE TAKE FURTHER NOTICE that, if no objections are received by the Objection Deadline, the Court may enter the Amended Order without further notice.

PLEASE TAKE FURTHER NOTICE that, if an objection is timely filed by the Objection Deadline, the Court will notify the Debtors and the objecting parties of the date and time of the hearing with respect to the Amended Order and the Debtors' obligation to notify all other parties entitled to receive notice. The Debtors and any objecting parties are required to attend the hearing in accordance with General Order M-543 (which can be found at <http://www.nysb.uscourts.gov>), and failure to attend may result in relief being granted or denied upon default.

PLEASE TAKE FURTHER NOTICE that copies of the Amended Order and other pleadings for subsequent hearings may be obtained free of charge by visiting the KCC website at <http://www.kcellc.net/avianca>. You may also obtain copies of any pleadings by visiting <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: New York, New York
January 19, 2021

/s/ Evan Fleck

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*Counsel for Debtors and
Debtors-in-Possession*

Annex A

Amended Order

**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)

:

Debtors. : (Jointly Administered)

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AMENDED FINAL ORDER AUTHORIZING (A) DEBTORS TO PAY PREPETITION CLAIMS OF FOREIGN CREDITORS; AND (B) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of an order (this “Order”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), for entry of interim and final orders (a) authorizing the Debtors to pay the prepetition claims of foreign creditors (the “Foreign Creditors”); (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to which checks and transfers are authorized to be paid in accordance with this Motion; and (c)

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.

to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing; and upon the First Day Declaration in support thereof; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein on a final basis.
2. Subject to the terms of this Final Order, the Debtors are authorized to pay in the ordinary course of the Debtors' businesses some or all of the prepetition claims that are due and owing to the Foreign Creditors (the "Foreign Creditor Claims"), in an aggregate amount not to exceed \$50 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 Foreign Creditor on account of prepetition Foreign Creditor 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 Foreign Creditors in excess of the Payment Cap.

4. In exchange for payment of the Foreign Creditor Claims, unless otherwise waived by the Debtors in their sole discretion, the Foreign Creditors shall be required to continue to provide goods and services to the Debtors on the most favorable terms in effect between such Foreign Creditor and the Debtors in the twelve (12) month period preceding the Petition Date or on such other terms as the Foreign Creditor and the Debtors may otherwise agree (the "Customary Trade Terms"). The Customary Trade Terms shall apply for the remaining term of the Foreign Creditor's agreement with the Debtors; *provided, however*, that the Debtors pay for the goods and services in accordance with the payment terms provided in the agreement.

5. The Debtors are hereby authorized, but not directed, to obtain written verification, before issuing payment to a Foreign Creditor, that such Foreign Creditor will, if applicable, continue to provide goods and services to the Debtors on Customary Trade Terms for the remaining term of the Foreign Creditor's agreement with the Debtors; provided, however, that the absence of such written verification shall not limit the Debtors' rights hereunder.

6. If any Foreign Creditor is paid with respect to its Foreign Creditor Claim and thereafter does not continue to provide goods or services to the Debtors on Customary Trade Terms, any payments made to the Foreign Creditor shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the Foreign Creditor Claim shall be reinstated as a prepetition claim in the amount recovered.

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 Foreign Creditor.

8. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfers regarding amounts authorized to be paid by the Debtors under this Order, without regard to whether any check or transfer was issued before or after the Petition Date. Such banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or transfer issued by the Debtors before the Petition Date should be honored pursuant to this Order, and shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

9. The Debtors are authorized, in their sole discretion and to the extent necessary, to issue checks and transfers postpetition to replace any checks or transfers in respect of the Foreign Creditors' claims that are dishonored or rejected.

10. Nothing contained in this Order shall be deemed to constitute an assumption of any executory contract or to require the Debtors to make any of the payments authorized herein.

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 subsequently dispute such obligation.

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

13. 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.

14. The Debtors shall maintain a matrix summarizing the aggregate estimated payout amount related to the Foreign Creditor Claims, the amount paid on account of each Foreign Creditor Claim, and shall provide such matrix on a monthly basis to the professionals retained by the Committee. The rights of the Committee to seek (a) additional disclosures from the Debtors, including disclosures regarding the terms of payments made on account of any Foreign Creditor Claim, and (b) to avoid and recover any payment made by the Debtors on account of any Foreign Creditor Claim, respectively, are expressly reserved and shall not be prejudiced by entry of the Interim Order or this Final Order.

15. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The notice requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

17. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, 2021

UNITED STATES BANKRUPTCY JUDGE

**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 FINAL ORDER AUTHORIZING (A) DEBTORS TO PAY PREPETITION CLAIMS OF FOREIGN CREDITORS; AND (B) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of an order (this “Order”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), for entry of interim and final orders (a) authorizing the Debtors to pay the prepetition claims of foreign creditors (the “Foreign Creditors”); (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of

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

the Debtors as to which checks and transfers are authorized to be paid in accordance with this Motion; and (c) to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing; and upon the First Day Declaration in support thereof; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein on a final basis.
2. Subject to the terms of this Final Order, the Debtors are authorized to pay in the ordinary course of the Debtors' businesses some or all of the prepetition claims that are due and owing to the Foreign Creditors (the "Foreign Creditor Claims"), in an aggregate amount not to exceed \$~~23~~50 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 Foreign Creditor on account of prepetition Foreign Creditor 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 Foreign Creditors in excess of the Payment Cap.

4. In exchange for payment of the Foreign Creditor Claims, unless otherwise waived by the Debtors in their sole discretion, the Foreign Creditors shall be required to continue to provide goods and services to the Debtors on the most favorable terms in effect between such Foreign Creditor and the Debtors in the twelve (12) month period preceding the Petition Date or on such other terms as the Foreign Creditor and the Debtors may otherwise agree (the "Customary Trade Terms"). The Customary Trade Terms shall apply for the remaining term of the Foreign Creditor's agreement with the Debtors; *provided, however*, that the Debtors pay for the goods and services in accordance with the payment terms provided in the agreement.

5. The Debtors are hereby authorized, but not directed, to obtain written verification, before issuing payment to a Foreign Creditor, that such Foreign Creditor will, if applicable, continue to provide goods and services to the Debtors on Customary Trade Terms for the remaining term of the Foreign Creditor's agreement with the Debtors; provided, however, that the absence of such written verification shall not limit the Debtors' rights hereunder.

6. If any Foreign Creditor is paid with respect to its Foreign Creditor Claim and thereafter does not continue to provide goods or services to the Debtors on Customary Trade Terms, any payments made to the Foreign Creditor shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in

cash upon written request. Upon recovery by the Debtors, the Foreign Creditor Claim shall be reinstated as a prepetition claim in the amount recovered.

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 Foreign Creditor.

8. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfers regarding amounts authorized to be paid by the Debtors under this Order, without regard to whether any check or transfer was issued before or after the Petition Date. Such banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or transfer issued by the Debtors before the Petition Date should be honored pursuant to this Order, and shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

9. The Debtors are authorized, in their sole discretion and to the extent necessary, to issue checks and transfers postpetition to replace any checks or transfers in respect of the Foreign Creditors' claims that are dishonored or rejected.

10. Nothing contained in this Order shall be deemed to constitute an assumption of any executory contract or to require the Debtors to make any of the payments authorized herein.

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 subsequently dispute such obligation.

12. Notwithstanding entry of this Order, the Debtors' rights to seek enforcement of the automatic stay provisions of section 362(a) of the Bankruptcy Code with

respect to any creditor that demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

13. 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.

14. The Debtors shall maintain a matrix summarizing the aggregate estimated payout amount related to the Foreign Creditor Claims, the amount paid on account of each Foreign Creditor Claim, and shall provide such matrix on a monthly basis to the professionals retained by the Committee. The rights of the Committee to seek (a) additional disclosures from the Debtors, including disclosures regarding the terms of payments made on account of any Foreign Creditor Claim, and (b) to avoid and recover any payment made by the Debtors on account of any Foreign Creditor Claim, respectively, are expressly reserved and shall not be prejudiced by entry of the Interim Order or this Final Order.

15. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The notice requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

17. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, ~~2020~~2021

UNITED STATES BANKRUPTCY JUDGE