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MILBANK LLP
Dennis F. Dunne
Evan R. Fleck
Benjamin Schak
Kyle R. Satterfield
55 Hudson Yards
New York, NY 10001
(212) 530-5000

MILBANK LLP
Gregory A. Bray
2029 Century Park East
33rd Floor
Los Angeles, CA 90067
(424) 386-4000

Counsel to Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
AVIANCA HOLDINGS S.A., *et al.*,	)	Case No. 20-11133 (MG)
Debtors.[1]	)	(Jointly Administered)

DEBTORS' (I) MEMORANDUM IN SUPPORT OF CONFIRMATION OF JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS AND (II) RESPONSE TO OBJECTIONS THERETO

Dated: October 24, 2021
New York, NY

[1] The Debtors in these 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. International 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); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo 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 D.C., Colombia.

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Exhibit B: Proposed Confirmation Order

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Avianca Holdings S.A. and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), hereby submit this memorandum of law (the "**Memorandum**") in support of confirmation of the *Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors*, filed on September 15, 2020 [Docket No. 2137] (together with all schedules and exhibits thereto, and as has been and may be modified, amended or supplemented from time to time, the "**Plan**")[2] and respectfully represent as follows:

PRELIMINARY STATEMENT

1. The Plan, which represents the culmination of the Debtors' restructuring and is the product of extensive good-faith, arm's-length negotiations with the Debtors' stakeholders, enjoys widespread creditor support. In total, holders of Claims totaling over $3.645 billion voted to accept the Plan—approximately 99% of the total amount of all Claims voted. The Plan also enjoys the support of the Committee, the fiduciary representing the interests of the Debtors' unsecured creditors.

2. Indeed, the Plan, which incorporates the Global Plan Settlement, represents a singular achievement for the Debtors and their stakeholders. As a result of the Global Plan Settlement, the Plan provides recoveries to holders of unsecured Claims that otherwise would not have been available. Further, the Plan allows the Debtors to achieve their key restructuring goals: reducing costs, restructuring their balance sheet, overhauling their business plan, and obtaining access to additional liquidity and long-term financing. The Debtors will emerge from these Chapter 11 Cases as a lean, refocused airline that is poised for success.

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[2] Capitalized terms used but not otherwise defined herein have the meaning ascribed to such terms in the Plan or the Disclosure Statement Order (as defined herein), as applicable.

3. Of the approximately 80,000 parties who received notice of the Plan and Confirmation Hearing, only eight (8) objected to Confirmation of the Plan (collectively, the "**Objections**"). The Debtors have worked diligently to narrow the issues and, where possible, resolve concerns raised by the objecting parties and expect that only six (6) Objections filed by two (2) groups of affiliated holders of 2023 Notes Claims (the "**Noteholder Objections**") will proceed at the Confirmation Hearing. As discussed below (*infra* section II), five (5) of these Noteholder Objections are substantively identical (and substantively identical to an objection that previously was stricken by the Court), and four (4) of them were filed *pro se*, notwithstanding that the fifth was filed by counsel representing all of them. The arguments collectively raised in the Noteholder Objections are meritless and represent a belated, collateral attack on the Final DIP Order.

4. The Objections, resolutions, and, as applicable, the Debtors' responses are summarized in the chart annexed hereto as **Exhibit A** (the "**Objection Response Chart**"). The Debtors also received a number of objections to their proposed assumption or assumption and assignment of Executory Contracts and Unexpired Leases (collectively, the "**Contract Objections**"). The Debtors are continuing to work to resolve the Contract Objections, which are listed on the chart annexed hereto as **Exhibit A-1** (the "**Contract Objection Chart**"). To the extent not otherwise resolved prior to the Confirmation Hearing, Contract Objections will be adjourned and set for hearing in accordance with Article VI.C of the Plan.

5. For the reasons set forth herein and in the *Declaration of Adrian Neuhauser in Support of Confirmation of Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors* (the "**Neuhauser Declaration**"), the *Declaration of Ginger Hughes in Support of Confirmation of Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors* (the

"**Hughes Declaration**"), and the *Certification of P. Joseph Morrow IV with Respect to the Tabulation of Votes on the Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors* [Docket No. 2239] (the "**Voting Certification**" and, together with the Neuhauser Declaration and the Hughes Declaration, the "**Supporting Declarations**"), each filed contemporaneously herewith, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code. Accordingly, the Debtors respectfully request that the Court confirm the Plan.

6. A proposed order confirming the Plan is annexed hereto as **Exhibit B** (the "**Proposed Confirmation Order**").

BACKGROUND[3]

7. Upon entry of the order approving the Disclosure Statement [Docket No. 2136] (the "**Disclosure Statement Order**"), and in accordance with its terms, the Debtors, through their solicitation agent, KCC LLC, caused the applicable solicitation packages to be transmitted to and served on the holders of Claims in Class 3 (Engine Loan Claims), Class 4 (Secured RCF Claims), Class 7 (Grupo Aval Lines of Credit Claims), Class 11 (General Unsecured Avianca Claims), and Class 15 (General Unsecured Convenience Claims). *See Certificate of Service* [Docket No. 2197]. In addition, the Debtors caused the notices of non-voting status annexed as Exhibits 3–5 to the Disclosure Statement Order to be transmitted to and served on the applicable holders of Claims in Class 1 (Priority Non-Tax Claims), Class 2 (Other Secured Claims), Class 5 (USAV Receivable Facility Claims), Class 6 (Grupo Aval Receivable Facility Claims), Class 8 (Grupo Aval Promissory Note Claims), Class 9 (Cargo Receivable Facility Claims), Class 10

[3] Relevant facts in support of Plan confirmation are set forth in the Plan, the Disclosure Statement, the Plan Supplement, the First Day Declaration, the Supporting Declarations, and the record of these Chapter 11 Cases. Such facts are incorporated herein as if fully set forth herein.

(Pension Claims), Class 12 (General Unsecured Avifreight Claims), Class 13 (General Unsecured Aerounión Claims), Class 14 (General Unsecured SAI Claims), Class 16 (Subordinated Claims), Class 17 (Intercompany Claims), Class 18 (Existing AVH Non-Voting Equity Interests), Class 19 (Existing AVH Common Equity Interests), Class 20 (Existing Avifreight Equity Interests), Class 21 (Existing SAI Equity Interests), Class 22 (Other Existing Equity Interests), and Class 23 (Intercompany Interests), as well as holders of Claims that are subject to a pending objection. *See id.* Further, in addition to causing the notice of confirmation hearing annexed as Exhibit 7 to the Disclosure Statement Order (the "**Confirmation Hearing Notice**") to be transmitted to and served on various parties in interest, *see id.*, the Debtors published the Confirmation Hearing Notice in *The New York Times (National Edition)*, *USA Today*, *El Diario de Hoy*, *El Comercio*, *La República*, *El Tiempo,* and *La República*, *see Affidavits of Publication of the Confirmation Hearing Notice* [Docket Nos. 2195–96].

8. The deadline for all holders of Claims entitled to vote on the Plan was October 15, 2021 at 4:00 p.m. (prevailing Eastern Time) (the "**Voting Deadline**").[4] As set forth in the Voting Certification and detailed in paragraph 9 below, the Plan has been accepted with respect to the Avianca Debtors by each Impaired Class entitled to vote to accept or reject the Plan. All Classes of Claims against each of the Unconsolidated Debtors are Unimpaired.

9. Votes cast with respect to the Plan are summarized below:

Class	% Number Accepted	% Amount Accepted	% Number Rejected	% Amount Rejected	Accept / Reject
Avianca Debtors					
Class 3 Engine Loan Claims	100.00%	100.00%	0.00%	0.00%	**Accept**

[4] Except as such deadline may be extended by the Debtors in their discretion pursuant to the solicitation and voting procedures approved by the Disclosure Statement Order.

Class 4 Secured RCF Claims	100.00%	100.00%	0.00%	0.00%	**Accept**
Class 7 Grupo Aval Lines of Credit Claims	100.00%	100.00%	0.00%	0.00%	**Accept**
Class 11 General Unsecured Avianca Claims	92.09%	98.96%	7.91%	1.04%	**Accept**
Class 15 General Unsecured Convenience Claims	77.57%	87.18%	22.43%	12.82%	**Accept**

ARGUMENT

10. As set forth herein and as will be demonstrated at the Confirmation Hearing, the Plan satisfies all of the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

I. THE PLAN SATISFIES THE BANKRUPTCY CODE'S REQUIREMENTS FOR CONFIRMATION AND SHOULD BE APPROVED.

11. The Plan satisfies the requirements for confirmation set forth in the applicable subsections of section 1129 of the Bankruptcy Code and complies with all other applicable sections of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law.

A. Section 1129(a)(1): The Plan Complies with All Applicable Provisions of the Bankruptcy Code.

12. Pursuant to section 1129(a)(1) of the Bankruptcy Code, a chapter 11 plan must comply with all applicable provisions of the Bankruptcy Code. The legislative history of section 1129(a)(1) indicates that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code, which, respectively, govern the classification of claims and the contents of a plan. *See* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978);

accord Kane v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 843 F.2d 636, 648–49 (2d Cir. 1988); *In re Drexel Burnham Lambert Grp.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992).

13. As demonstrated below, the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code,[5] as well as all other applicable provisions of the Bankruptcy Code, and therefore the Plan satisfies section 1129(a)(1) of the Bankruptcy Code.

B. Section 1122: The Plan's Classification Structure is Proper.

14. Bankruptcy Code section 1122 provides that:

> Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

11 U.S.C. § 1122(a).

15. The Plan provides for twenty-three (23) Classes of Claims against and Interests in the Debtors, which are summarized as follows:[6]

- Class 1 (Priority Non-Tax Claims) includes Claims against any Debtor entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than Administrative Expenses, DIP Facility Claims, or Priority Tax Claims.
- Class 2 (Other Secured Claims) includes Secured Claims against any Debtor other than Priority Tax Claims (except as set forth in Article II.F of the Plan), DIP Facility Claims, Engine Loan Claims, Secured RCF Claims, USAV Receivable Facility Claims, Grupo Aval Receivable Facility Claims, Grupo Aval Lines of Credit Claims, Grupo Aval Promissory Note Claims, or Cargo Receivable Facility Claims.
- Class 3 (Engine Loan Claims) includes all Claims on account of, under, or related to the Engine Loan.
- Class 4 (Secured RCF Claims) includes all Claims on account of, under, or related to the Secured RCF.

[5] The Debtors are not individuals and, thus, section 1123(c) of the Bankruptcy Code is inapplicable.

[6] DIP Facility Claims, Administrative Expenses, and Priority Tax Claims are not required to be classified pursuant to section 1123(a)(1) of the Bankruptcy Code.

- Class 5 (USAV Receivable Facility Claims) includes all Claims on account of, under, or related to the USAV Receivable Facility, as amended.

- Class 6 (Grupo Aval Receivable Facility Claims) includes all Claims on account of, under, or related to the Grupo Aval Receivable Facility.

- Class 7 (Grupo Aval Lines of Credit Claims) includes all Claims on account of, under, or related to the Grupo Aval Lines of Credit.

- Class 8 (Grupo Aval Promissory Note Claims) includes all Claims on account of, under, or related to the Grupo Aval Promissory Notes.

- Class 9 (Cargo Receivable Facility Claims) includes all Claims on account of, under, or related to the Cargo Receivable Facility.

- Class 10 (Pension Claims) includes Claims under the Colombian Pension Regime of (i) CAXDAC for amounts that are required to be paid in the ordinary course under Decree 1269 of 2009, to fund the pensions of civil aviators who are or were employed by Aerovías del Continente Americano S.A. Avianca and/or Tampa Cargo S.A.S. (or their respective predecessors in interest) and (ii) other private pension funds approved in accordance with Colombian law to hold and manage pension funds.

- Class 11 (General Unsecured Avianca Claims) includes General Unsecured Claims against any of the Avianca Debtors, other than General Unsecured Convenience Claims but including all 2020 Notes Claims, 2023 Notes Claims, and Direct Loan Claims.

- Class 12 (General Unsecured Avifreight Claims) includes General Unsecured Claims against Avifreight.

- Class 13 (General Unsecured Aerounión Claims) includes General Unsecured Claims against Aerounión.

- Class 14 (General Unsecured SAI Claims) includes General Unsecured Claims against SAI.

- Class 15 (General Unsecured Convenience Claims) includes General Unsecured Claims (other than 2020 Notes Claims, 2023 Notes Claims, or Direct Loan Claim) against one or more of the Avianca Debtors that are each Allowed in an amount of $500,000 or less.

- Class 16 (Subordinated Claims) includes Claims that are subject to subordination in accordance with sections 510(b)–(c) of the Bankruptcy Code or otherwise.

- Class 17 (Intercompany Claims) includes Claims against a Debtor held (a) by another Debtor or (b) by a non-Debtor that is a majority-owned direct or indirect

subsidiary of a Debtor, other than Avianca Perú S.A. en Liquidación, Atlantic Aircraft Holding Two Ltd., Airlease Twenty Four Ltd., Airlease Twenty Six Ltd., Airlease Twenty Seven Ltd., Airlease Twenty Eight Ltd., Airlease Thirty Ltd., Airlease Thirty One Ltd., Little Plane Limited, Airlease Thirteen Ltd., Airlease Fourteen Ltd., Atlantic Aircraft Holding Ltd., Airlease Twenty Two Ltd., Airlease Twenty Three Ltd., Airlease Twenty Five Ltd., Airlease Twenty Nine Ltd., Turbo Aviation Three S.A., Airlease Twelve Ltd., Airlease Eleven Ltd, Air Lease One, Air Lease Two, Aviation Leasing Services (ALS) Investments S.A., Tri-Aircraft-Leasing LLC, Tri-Aircraft Leasing II LLC, Octo-Aircraft Leasing LLC, and Uni-Aircraft Leasing LLC.

- Class 18 (Existing AVH Non-Voting Equity Interests) includes existing preferred Interests in AVH, including, for the avoidance of doubt, American depositary receipts that are linked to Existing AVH Non-Voting Equity Interests.

- Class 19 (Existing AVH Common Equity Interests) includes Existing AVH Equity Interests other than Existing AVH Non-Voting Equity Interests.

- Class 20 (Existing Avifreight Equity Interests) includes existing Interests in Avifreight, other than Interests held by other Debtors.

- Class 21 (Existing SAI Equity Interests) includes existing Interests in SAI, other than Interests held by other Debtors.

- Class 22 (Other Existing Equity Interests) includes Interests in Debtors other than Existing AVH Equity Interests, Existing Avifreight Equity Interests, Existing SAI Equity Interests, and Intercompany Interests that are not held, directly or indirectly, by other Debtors.

- Class 23 (Intercompany Interests) includes Interests in a Debtor held (a) by another Debtor or (b) by a non-Debtor that is a wholly owned direct or indirect subsidiary of a Debtor.

16. Generally, the Plan incorporates a "waterfall" classification scheme that follows the statutory priorities prescribed by the Bankruptcy Code. All Claims and Interests within a Class have the same or similar rights against the applicable Debtor(s).

17. Claims in Class 11 (General Unsecured Avianca Claims) consist of all General Unsecured Claims against the Avianca Debtors, including 2020 Notes Claims, 2023 Notes Claims, and Direct Loan Claims, but excluding General Unsecured Convenience Claims. All such Claims are "substantially similar" to one another because they are either unsecured or effectively

unsecured pursuant to section 506(a) of the Bankruptcy Code and thus can be classified together. 11 U.S.C. § 1122(a). While the 2023 Notes Claims and Direct Loan Claims are nominally Secured Claims, the DIP Facility is secured, in part, by the same collateral securing the 2023 Notes and the Direct Loan Claims (the "**Shared Collateral**"). Pursuant to paragraph 28 of the Final DIP Order, the DIP Facility Claims "shall be satisfied first from proceeds of the Shared Collateral." Final DIP Order, ¶ 28. As set forth in the Neuhauser Declaration and as detailed *infra* section II.A, the value of the Shared Collateral does not exceed the Allowed amount of Tranche B DIP Facility Claims, as evidenced by the market-based evidence generated by the Equity Solicitation Process (as defined below). Thus, after the DIP Facility Claims are satisfied, no value will be available to satisfy 2023 Notes Claims or Direct Loan Claims from the Shared Collateral, thereby rendering the 2023 Notes and Direct Loan Claims (as well as any other indebtedness secured by the Shared Collateral of the same priority as the 2023 Notes and the Direct Loan Claims), effectively unsecured pursuant to section 506(a) of the Bankruptcy Code. Therefore, all Claims in Class 11 (General Unsecured Avianca Claims) are unsecured and are properly classified together.

18. In accordance with section 1122(b) of the Bankruptcy Code, the Debtors separately classified Claims in Class 15 (General Unsecured Convenience Claims), i.e., General Unsecured Claims (other than 2020 Notes Claims, 2023 Notes Claims, or Direct Loan Claims) against one or more of the Avianca Debtors that are Allowed in an amount of $500,000 or less, from Claims in Class 11 (General Unsecured Avianca Claims). *See* 11 U.S.C. § 1122(b) (permitting a debtor to "designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience").

19. Therefore, the Plan provides for the classification of Claims against and Interests in each Debtor based upon the differences in legal nature and/or priority of such Claims and Interests. Thus, the classification scheme of the Plan is rational and complies with the Bankruptcy Code. Accordingly, the classification scheme of the Plan complies with section 1122 of the Bankruptcy Code and should be approved.

C. Section 1123(a): The Plan's Contents Comply with the Mandatory Bankruptcy Code Requirements.

20. Section 1123(a) of the Bankruptcy Code sets forth seven requirements that the proponent of a chapter 11 plan must satisfy.[7] *See* 11 U.S.C. § 1123(a). The Plan fully complies with each such requirement, and no party has objected to confirmation on the basis that the Plan fails to satisfy this provision of the Bankruptcy Code.

- The Plan designates Classes of Claims and Interests as required by section 1123(a)(1) of the Bankruptcy Code. *See* Plan, Art. III.
- The Plan specifies whether each Class of Claims and Interests is Impaired or Unimpaired under the Plan, as well as the treatment of each Impaired Class, as required by sections 1123(a)(2) and 1123(a)(3) of the Bankruptcy Code, respectively. *See* Plan, Art. III.
- Except as otherwise agreed to by a Holder of a particular Claim or Interest, the treatment of each Claim or Interest in each Class is the same as the treatment of each other Claim or Interest in such Class, as required by section 1123(a)(4) of the Bankruptcy Code. *See* Plan, Art. III.B. Although, as a technical matter, Ineligible Holders of Claims in Class 11 will receive their Pro Rata share of the Unsecured Claimholder Cash Pool (or, as applicable, the Unsecured Claimholder Enhanced Cash Pool), while Eligible Holders of Claims in Class 11 may elect to receive the Unsecured Claimholder Equity Package, such treatment does not contravene section 1123(a)(4) of the Bankruptcy Code because the value of the Cash distributed to a holder of a General Unsecured Avianca Claim on account of its Claim from the Unsecured Claimholder Cash Pool (or, as applicable, the Unsecured Claimholder Enhanced Cash Pool) is intended to be equal to the aggregate value that such holder would have received on account of its Claim if it elected (or had the ability to elect) to receive the Unsecured Claimholder Equity Package.

[7] Section 1123(a)(8) of the Bankruptcy Code only applies in a case in which the debtor is an individual and, thus, is inapplicable to the Chapter 11 Cases.

Therefore, the Plan complies with section 1123(a)(4) of the Bankruptcy Code with respect to such Claims.

- The Plan provides adequate means for its implementation as required by section 1123(a)(5) of the Bankruptcy Code through, among other things, (i) the provisions setting forth the sources of consideration to be distributed under the Plan, *see* Plan, Art. V.D; (ii) the provisions governing the issuance of the New Equity Interests and Warrants, *see* Plan, Arts. V.D.3–.4, .M; (iv) the provisions governing the cancellation of certain loans, securities, and other obligations, *see* Plan, Art. V.G; (v) the Transaction Steps to implement the Restructuring Transactions contemplated by the Plan, *see* Plan, Art. V.C; (vii) the provisions in Article V of the Plan, including the vesting of assets in the Reorganized Debtors, the continued existence of the Reorganized Debtors, preservations of Causes of Action, and the adoption and filing of the New Organizational Documents pursuant to applicable law, *see* Plan, Arts. V.E–.F, .H–.J, N; and (viii) the provisions governing the assumption of the Insurance Contracts and survival of the Indemnification Obligations, *see* Plan, Art. VI.D.

- In accordance with section 1123(a)(6) of the Bankruptcy Code, the organizational documents of each Debtor have been or will be amended on or prior to the Effective Date to prohibit the issuance of non-voting equity securities and set forth an appropriate distribution of voting power among classes of equity securities possessing voting power.

- The Plan provisions governing the manner of selection of any officer, director, or manager are consistent with the interests of creditors and equity security holders and with public policy in accordance with section 1123(a)(7) of the Bankruptcy Code. The Plan provides that, except as otherwise set forth in the Plan Supplement, the officers of the Debtors immediately before the Effective Date will serve as the initial officers of the respective Reorganized Debtors on and after the Effective Date and that the Debtors will disclose, or have disclosed as part of the Plan Supplement, to the extent known, the identity and affiliations of all individuals or entities proposed to serve as directors of the Reorganized Debtors in accordance with section 1129(a)(5) of the Bankruptcy Code.

D. Section 1123(b): The Plan's Contents Comply with the Permissive Bankruptcy Code Requirements.

21. Section 1123(b) of the Bankruptcy Code sets forth permissive provisions that may be incorporated into a chapter 11 plan, and no party has objected to confirmation on the basis that the Plan fails to satisfy this provision of the Bankruptcy Code. Each provision of the Plan is consistent with section 1123(b):

- As permitted by section 1123(b)(1) of the Bankruptcy Code and pursuant to section 1124 of the Bankruptcy Code, Article III.B of the Plan describes the treatment of Unimpaired Classes and Impaired Classes.

- As permitted by section 1123(b)(2) of the Bankruptcy Code, Article VI of the Plan provides for the procedures governing the rejection, assumption, and assumption and assignment of Executory Contracts and Unexpired Leases.

- As permitted by section 1123(b)(3)(A) of the Bankruptcy Code, Article IX.A of the Plan provides that, in consideration for the distributions and other benefits provided pursuant to the Plan, the Plan includes a good-faith compromise and settlement of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Interest may have, or any distribution to be made on account of Allowed Claims or Interests. In accordance with section 1123(b)(3)(A) of the Bankruptcy Code, the Plan contains certain release provisions consistent with case law in the Second Circuit, which are discussed *infra* Section I.D.1. As permitted by section 1123(b)(3)(B), Article V.N of the Plan preserves the Retained Causes of Action and provides that the Reorganized Debtors will have the right to commence and pursue such Retained Causes of Action.

- As permitted by section 1123(b)(5) of the Bankruptcy Code, the Plan modifies the rights of holders of Claims and Interests in Class 3 (Engine Loan Claims), Class 4 (Secured RCF Claims), Class 7 (Grupo Aval Lines of Credit Claims), Class 11 (General Unsecured Avianca Claims), Class 15 (General Unsecured Convenience Claims), Class 16 (Subordinated Claims), Class 18 (Existing AVH Non-Voting Equity Interests), Class 19 (Existing AVH Common Equity Interests), Class 22 (Other Existing Equity Interests) and leaves Unimpaired the rights of holders of Claims and Interests in Class 1 (Priority Non-Tax Claims), Class 2 (Other Secured Claims), Class 5 (USAV Receivable Facility Claims), Class 6 (Grupo Aval Receivable Facility Claims), Class 8 (Grupo Aval Promissory Note Claims), Class 9 (Cargo Receivable Facility Claims), Class 10 (Pension Claims), Class 12 (General Unsecured Avifreight Claims), Class 13 (General Unsecured Aerounión Claims), Class 14 (General Unsecured SAI Claims), Class 17 (Intercompany Claims) (in the event that Intercompany Claims are Reinstated), Class 20 (Existing Avifreight Equity Interests), Class 21 (Existing SAI Equity Interests), and Class 23 (Intercompany Interests) (in the event that Intercompany Interests are Reinstated).

- Section 1123(b)(6) of the Bankruptcy Code is a "catchall" provision, which permits inclusion in a plan of any appropriate provision as long as such provision is not inconsistent with applicable provisions of the Bankruptcy Code. There are no provisions in the Plan that are inconsistent with the Bankruptcy Code. In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan contains certain release, exculpation, and injunction provisions consistent with the applicable provisions of the Bankruptcy Code and case law in the Second Circuit, which are discussed *infra* Section I.D.1.

1. The Plan Releases, Exculpation Provision, and Injunction Provision Should Be Approved.

22. The Plan provides for (i) the release of claims and Causes of Action held by (a) the Debtors and their Estates as set forth in Article IX.D thereof (the "**Debtor Releases**"), (b) certain non-Debtor third parties—the Releasing Parties[8]—against the Released Parties,[9] as set forth in Article IX.E thereof (the "**Third-Party Releases**" and, together with the Debtor Releases, the "**Plan Releases**"), (ii) the exculpation provision set forth in Article IX.F thereof (the "**Exculpation Provision**"), and (iii) the injunction provision set forth in Article IX.G thereof (the "**Injunction Provision**"). The Plan Releases, Exculpation Provision, and Injunction Provision are integral components of the Plan and the transactions contemplated therein, are appropriate and necessary under the circumstances, are consistent with the Bankruptcy Code, and comply with applicable law. Accordingly, each should be approved.

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[8] As defined in the Plan, "**Releasing Parties**" means "collectively, each of the following in their capacity as such: (i) each of the Released Parties (other than the Debtors and the Reorganized Debtors); (ii) all holders of Claims that vote to accept the Plan; (iii) all holders of Claims or Interests that are Unimpaired under the Plan and do not opt out of granting the releases in Article IX.E of the Plan; and (iv) all holders of Claims in Classes that are entitled to vote under the Plan but that (a) vote to reject the Plan or do not vote either to accept or reject the Plan and (b) do not opt out of granting the releases in Article IX.E of the Plan; and (v) with respect to each of the foregoing Entities and Persons set forth in clauses (ii) through (iv), all of such Entities' and Persons' respective Related Parties." Further, the Plan provides that, "[f]or the avoidance of doubt, holders of Claims or Interests in Classes that are deemed to reject the Plan and therefore are not entitled to vote under the Plan are not Releasing Parties in their capacities as holders of such Claims or Interests."

[9] As defined in the Plan, "**Released Parties**" means "collectively, each of the following in their capacity as such: (A)(i) the Debtors, (ii) the Reorganized Debtors, (iii) the Committee and its members, (iv) the DIP Agent, (v) the DIP Lenders, (vi) the Consenting Noteholders, (vii) the Supporting Tranche B DIP Lenders, (viii) the Exit Facility Indenture Trustee, (ix) the DIP Indenture Trustee; (x) the Exit Facility Lenders, (xi) the Indenture Trustees, (xii) the Grupo Aval Entities (as defined in the Grupo Aval Settlement Agreement), and (xiii) the Secured RCF Agent and the Secured RCF Lenders, and (B) with respect to each of the foregoing Entities and Persons set forth in clause (A), all of such Entities' and Persons' respective Related Parties." Further, the Plan provides that, "[n]otwithstanding the foregoing, (i) any Entity or Person that opts out of the releases set forth in Article IX.E of the Plan on its Ballot shall not be deemed a Released Party; (ii) any director or officer of the Debtors whose term of service lapsed prior to July 1, 2019 and who did not subsequently hold a director or officer position with any of the Debtors after such date shall not be deemed a Released Party; and (iii) any Entity or Person that would otherwise be a Released Party hereunder but is party to one or more Retained Causes of Action shall not be deemed a Released Party with respect to such Retained Causes of Action."

a. Debtor Releases Are Appropriate and Should Be Approved

23. When considering releases by a debtor pursuant to section 1123(b)(3)(A), the appropriate standard is whether the release is a valid exercise of the debtor's business judgment and is fair, reasonable, and in the best interests of the estate. *See In re Motors Liquidation Co*., 447 B.R. 198, 220 (Bankr. S.D.N.Y. 2011) ("Releases by estates involve a give-up of potential rights that are owned by the estate, and are perfectly permissible in a plan, either as parts of plan settlements or otherwise, though the court must satisfy itself (at least if anyone raises the issue) that the give-up is an appropriate exercise of business judgment, and, possibly, in the best interests of the estate."); *In re DBSD N. Am., Inc.*, 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009) (approving a plan provision that released and discharged claims and causes of action by the debtors on the basis that such releases and discharges "represent a valid exercise of the Debtors' business judgment, and are fair, reasonable and in the best interests of the estate"), *aff'd*, No. 09 Civ. 10156(LAK), 2010 WL 1223109 (S.D.N.Y. March 24, 2010), *aff'd in part and rev'd in part on other grounds*, 627 F.3d 496 (2d Cir. 2010); *JPMorgan Chase Bank N.A. v. Charter Commc'ns Operating, LLC* (*In re Charter Commc'ns*), 419 B.R. 221, 257–60 (Bankr. S.D.N.Y. 2009) ("When reviewing releases in a debtor's plan, courts consider whether such releases are in the best interest of the estate"). Further, a debtor's decision to release claims under a plan is afforded deference as a matter of business judgment. *See, e.g.*, *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 263 n.289 ("The Debtors have considerable leeway in issuing releases of any claims the Debtors themselves own . . . .").

24. The Debtor Releases represent a sound exercise of the Debtors' business judgment. Many of the Released Parties have provided consideration to the Debtors' Estates during the course of these Chapter 11 Cases. For example, some of the Released Parties, among other things, agreed to compromise or waive their rights and claims and/or facilitated the Global

Plan Settlement with the Committee. Without these and other contributions from the Released Parties, the Debtors likely would not be poised to emerge from chapter 11 on a consensual basis. Further, the Debtors do not believe that, absent the Debtor Releases, they would have been able to secure the substantial benefits provided by the Plan, including a deleveraged balance sheet and the opportunity to emerge from chapter 11 as a stronger and more efficient airline.

25. In addition, the Debtor Releases are also appropriate because the released claims and causes of action have no material value to the Debtors and their Estates, and the *de minimis* value, if any, of such claims is outweighed significantly by the value and benefits provided by the Plan and the transactions contemplated therein. Courts have found that a debtor's release of claims are often in the best interests of the estate when "the costs involved [in pursuing the released claims] likely would outweigh any potential benefit from pursuing such claims." *In re Lear Corp.*, Case No. 09-14326 (ALG), 2009 WL 6677955, at *7 (Bankr. S.D.N.Y. Nov. 5, 2009); *accord In re Calpine Corp.*, Case No. 05-60200 (BRL), 2007 WL 4565223, at *9-10 (Bankr. S.D.N.Y. Dec. 19, 2007).

26. Accordingly, for the reasons set forth above, the Debtor Releases reflect a reasonable exercise of the Debtors' business judgment and should be approved under section 1123(b)(3)(A) of the Bankruptcy Code.

b. Third-Party Releases Are Consensual and Should Be Approved.

27. Pursuant to Article IX.E of the Plan, the Debtors seek consensual Third-Party Releases from the following Entities and Persons (and their respective Related Parties):

- the Committee and its members, the DIP Agent, the DIP Lenders, the Consenting Noteholders, the Supporting Tranche B DIP Lenders, the Exit Facility Indenture Trustee, the DIP Indenture Trustee, the Exit Facility Lenders, the Indenture Trustees, the Grupo Aval Entities (as defined in the Grupo Aval Settlement Agreement), and the Secured RCF Agent and the Secured RCF Lenders;

- all holders of Claims that vote to accept the Plan;

- all holders of Claims and Interests that are Unimpaired under the Plan and do not opt out of granting the Third Party Releases; and
- all holders of Claims in Classes that are entitled to vote on the Plan and that (x) vote to reject the Plan or do not vote either to accept or reject the Plan and (y) do not opt out of granting the Third Party Releases.

28. Courts may approve third-party releases when such releases are consensual. *See Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.),* 416 F.3d 136, 142 (2d Cir. 2005). The Court previously found that the Third-Party Releases are consensual. *See Memorandum Opinion Approving Third Amended Disclosure Statement, Solicitation procedures and Other Relief* [Docket No. 2135], at 19–20. Specifically, the Court, overruling the objection of the U.S. Trustee to the Third Party Releases,[10] found that "the opt-out structure is permissible provided that a clear and prominent explanation of the procedure is given as it has been here," that the solicitation materials circulated to the holders of Claims and Interests "clearly explain[] the required procedure" for opting out of granting the Third Party Releases, and that the "opt-out structure is consistent with the Supreme Court's authority on consent in the context of class action releases," thereby finding that the Third-Party Releases are consensual. *Id.*

29. Accordingly, the Debtors submit that the Third-Party Releases are consensual and should be approved.

c. The Plan Exculpation Provision Should be Approved.

30. In addition to the Plan Releases discussed above, the Exculpation Provision exculpates the Exculpated Parties[11] for claims arising out of or relating to, among other things, the

[10] In connection with Confirmation, the U.S. Trustee filed a "Statement" [Docket No. 2240], reiterating its position with respect to the Third-Part Releases while "[a]cknowledging that this Court overruled [its] previous objection" and not objecting to Confirmation on that basis.

[11] As defined in the Plan, "**Exculpated Parties**" means, "collectively, and in each case in their capacities as such during the Chapter 11 Cases, (A)(i) the Debtors, (ii) the Reorganized Debtors, (iii) the Committee and its members, and (iv) the General Unsecured Claims Observer; (B) with respect to each of the foregoing Entities and Persons in clause (A), all of such Entities' and Persons' Related Parties, solely to the extent such Related Parties are fiduciaries of the Estates or otherwise to the fullest extent provided for pursuant to section 1125(e) of the

Debtors' restructuring process, the Chapter 11 Cases, solicitation of the Plan, and the negotiations and agreements made in connection therewith. The Exculpated Parties are limited to Estate fiduciaries and those parties that would be entitled to exculpation by section 1125(e) of the Bankruptcy Code, and the Exculpation Provision does not exculpate acts or omissions that are determined by a Final Order to have constituted intentional fraud, willful misconduct, or gross negligence. The Debtors believe that the Exculpation Provision is important because the Exculpated Parties have participated in the Chapter 11 Cases in good faith, and such provision is necessary to protect them from collateral attacks related to any good-faith acts or omissions in connection with, or related to, among other things, the Chapter 11 Cases and the Plan. Accordingly, the Debtors believe that the Exculpation Provision is consistent with applicable law and should be approved. *See, e.g.*, *In re Residential Cap. LLC*, Case No. 12-12020 (MG) 2013 WL 12161584, at *13 (Bankr. S.D.N.Y. Dec. 11, 2013) (approving exculpation for parties that were "instrumental to the successful prosecution of the Chapter 11 Cases or their resolution pursuant to the Plan, and/or provided a substantial contribution to the Debtors").

31. Courts in this and other districts have approved similar exculpation provisions in chapter 11 plans of similarly situated debtors. *See, e.g.*, *Genco Shipping & Trading Ltd.*, Case No. 14-11108 (SHL), [Docket No. 233] at ¶ 24(d), (Bankr. S.D.N.Y. July 2, 2014) (approving exculpation of both estate fiduciaries non-estate fiduciaries); *In re Eastman Kodak Co.*, Case No. 12-10202 (ALG), [Docket No. 4966] at Ex. A ¶ 12.7 (Bankr. S.D.N.Y. Aug. 23, 2013)

Bankruptcy Code; (C)(i) the DIP Agent, (ii) the DIP Lenders, (iii) the Consenting Noteholders, (iv) the Supporting Tranche B DIP Lenders, (v) the Exit Facility Indenture Trustee, (vi) the DIP Indenture Trustee, (vii) the Exit Facility Lenders, and (viii) the Secured RCF Agent and the Secured RCF Lenders and (D) with respect to each of the foregoing Entities and Persons in clause (C), all of such Entities' and Persons' Related Parties; provided, that, with respect to the Entities and Persons in clauses (C) and (D), any exculpations afforded under the Plan or the Confirmation Order shall be granted only to the extent provided for pursuant to section 1125(e) of the Bankruptcy Code."

(same); *In re Neff Corp.*, Case No. 10-12610 (SCC), [Docket No. 443] at 42 (Bankr. S.D.N.Y. Sept. 20, 2010) (same); *In re Charter Commc'ns, Inc.*, Case No. 09-11435 (JMP), [Docket No. 921] at 44 (Bankr. S.D.N.Y. Nov. 17, 2009) (same); *In re Almatis, B.V.*, Case No. 10-12308 (MG), [Docket No. 444] at 7 (Bankr. S.D.N.Y. Sept. 20, 2010) (same).

32. Accordingly, the Debtors submit that the Exculpation Provision should be approved.

d. The Plan Injunction Provision Should be Approved.

33. The Injunction Provision is necessary to, among other things, enforce the Plan Releases and the Exculpation Provision by permanently enjoining all persons and entities from commencing or continuing in any manner any claim that was released or exculpated pursuant to such provisions. The Debtors believe that the Injunction Provision is narrowly tailored to achieve that purpose and therefore should be approved.

34. Based upon the foregoing, the Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code. Therefore, the Plan satisfies the requirement of section 1129(a)(1) of the Bankruptcy Code.

E. Section 1129(a)(2): The Debtors' Compliance with the Bankruptcy Code.

35. Section 1129(a)(2) of the Bankruptcy Code requires plan proponents to comply with the applicable provisions of the Bankruptcy Code, and no party has objected to confirmation on the basis that the Plan fails to satisfy section 1129(a)(2).

36. The legislative history of section 1129(a)(2) indicates that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. *See* H.R. Rep. No. 95–595, at 412 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *accord Drexel Burnham Lambert Grp.*, 138 B.R. at 759.

The Debtors submit that, as demonstrated below, the requirements of section 1129(a)(2) of the Bankruptcy Code have been satisfied.

1. Section 1125: Disclosure Statement and Solicitation.

37. Section 1125(b) of the Bankruptcy Code provides, in pertinent part, that:

> An acceptance or rejection of a plan may not be solicited after the commencement of [a] case under [the Bankruptcy Code] from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. . . .

11 U.S.C. § 1125(b).

38. By entry of the Disclosure Statement Order on September 15, 2021, the Court approved the Disclosure Statement as containing "adequate information" pursuant to section 1125(b) of the Bankruptcy Code. As set forth in the Voting Certification, the Debtors solicited votes on the Plan from holders of Claims in Class 3 (Engine Loan Claims), Class 4 (Secured RCF Claims), Class 7 (Grupo Aval Lines of Credit Claims), Class 11 (General Unsecured Avianca Claims), and Class 15 (General Unsecured Convenience Claims) in a manner consistent with the provisions of the Disclosure Statement Order. Further, in accordance with section 1125(b) of the Bankruptcy Code, the Debtors did not solicit votes on the Plan from any holder of a Claim or Interest prior to the entry of the Disclosure Statement Order.

2. Section 1126: Acceptance of the Plan.

39. Section 1126 of the Bankruptcy Code sets forth the procedures for soliciting votes on a chapter 11 plan and determining acceptance thereof. Pursuant to section 1126 of the Bankruptcy Code, only holders of Allowed Claims or Interests that are Impaired and will receive or retain property under the Plan on account of such Claims or Interests may vote to accept or reject the plan. *See* 11 U.S.C. § 1126.

40. As set forth in the Voting Certification, the Debtors solicited acceptances of the Plan from holders of Claims in Class 3 (Engine Loan Claims), Class 4 (Secured RCF Claims), Class 7 (Grupo Aval Lines of Credit Claims), Class 11 (General Unsecured Avianca Claims), and Class 15 (General Unsecured Convenience Claims) in accordance with section 1126 of the Bankruptcy Code.

41. In accordance with section 1126(f) of the Bankruptcy Code, the Debtors did not solicit acceptances of the Plan from holders of Claims and Interests in Class 1 (Priority Non-Tax Claims), Class 2 (Other Secured Claims), Class 5 (USAV Receivable Facility Claims), Class 6 (Grupo Aval Receivable Facility Claims), Class 8 (Grupo Aval Promissory Note Claims), Class 9 (Cargo Receivable Facility Claims), Class 10 (Pension Claims), Class 12 (General Unsecured Avifreight Claims), Class 13 (General Unsecured Aerounión Claims), Class 14 (General Unsecured SAI Claims), Class 20 (Existing Avifreight Equity Interests), and Class 21 (Existing SAI Equity Interests) because such Claims and Interests are Unimpaired under the Plan and thus their holders are conclusively presumed to have accepted the Plan.

42. In accordance with section 1126(g) of the Bankruptcy Code, the Debtors did not solicit acceptances of the Plan from Holders of Claims and Interests in Class 16 (Subordinated Claims), Class 18 (Existing AVH Non-Voting Equity Interests), Class 19 (Existing AVH Common Equity Interests), and Class 22 (Other Existing Equity Interests) because the holders of such Claims and Interests will neither receive nor retain any property on account of their Claims and Interests and thus are deemed not to have accepted the Plan.

43. In accordance with sections 1126(f) and 1126(g) of the Bankruptcy Code, the Debtors did not solicit acceptances of the Plan from holders of Claims and Interests in Class 17 (Intercompany Claims) and Class 23 (Intercompany Interests) because either (a) such Claims

and Interests are Unimpaired under the Plan and thus their holders are conclusively presumed to have accepted the Plan or (b) the holders of such Claims and Interests will receive no distribution or property on account of their Claims and Interests and thus are deemed not to have accepted the Plan.

44. Section 1126(c) of the Bankruptcy Code specifies the requirements for acceptance of a plan by impaired classes of claims entitled to vote to accept or reject the plan:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

45. As set forth in the Voting Certification, the Plan has been accepted by well in excess of two-thirds in amount and one-half in number of the holders of Claims in Class 3 (Engine Loan Claims), Class 4 (Secured RCF Claims), Class 7 (Grupo Aval Lines of Credit Claims), Class 11 (General Unsecured Avianca Claims), and Class 15 (General Unsecured Convenience Claims).

46. Based upon the foregoing, the Debtors submit that the requirements of section 1129(a)(2) of the Bankruptcy Code have been satisfied.

F. Section 1129(a)(3): The Plan has been Proposed in Good Faith.

47. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law." No party has objected to confirmation on the basis that the Plan fails to satisfy this provision of the Bankruptcy Code.

48. To demonstrate that a plan was proposed in good faith, a debtor must "show[]that the plan was proposed with 'honesty and good intentions' and with 'a basis for

expecting that a reorganization can be effected.'" *Koelbl v. Glessing (In re Koelbl)*, 751 F.2d 137, 139 (2d Cir. 1984) (quoting *Manati Sugar Co. v. Mock*, 75 F.2d 284, 285 (2d Cir. 1935)). "Good faith is 'generally interpreted to mean that there exists a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" *In re Chemtura Corp.*, 439 B.R. 561, 608 (Bankr. S.D.N.Y. 2010) (quoting *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984)) "Whether a [chapter 11] plan has been proposed in good faith must be viewed in the totality of the circumstances, and the requirement of [s]ection 1129(a)(3) speaks more to the process of plan development than to the content of the plan." *Id.* (internal quotation marks omitted).

49. The Plan pursues a result consistent with the Bankruptcy Code's objectives: reorganization and value maximization. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship (In re LaSalle)*, 526 U.S. 434, 453 (1999) (holding that the two recognized policies underlying Chapter 11" are "preserving going concerns and maximizing property available to satisfy creditors"). During these Chapter 11 Cases, the Debtors, the Committee, and holders of Tranche B DIP Facility Claims engaged in good-faith, arm's-length negotiations that ultimately resulted in the Global Plan Settlement, which provided recoveries to holders of General Unsecured Avianca Claims that otherwise would not have been available and resolved all issues that may have been raised by the Committee with respect to the Plan, including, among other things, disputes on enterprise value. The support of the Plan by the Committee—the fiduciary representing the interests of the Debtors' unsecured creditors—is indicative of the Debtors' good-faith proposal of the Plan. *Cf. In re The Leslie Fay Cos., Inc.*, 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997) ("The fact that the plan is proposed by the committee as well as the debtors is strong evidence that the plan is proposed in good faith."). Further, the Plan, which incorporates the Global

Plan Settlement, will allow the Debtors to emerge from chapter 11 on a going-concern basis as a stronger and more efficient airline with a deleveraged balance sheet, thereby positioning the Reorganized Debtors for success.

50. Accordingly, the "good faith" requirement of section 1129(a)(3) is satisfied. *See Chemtura*, 439 B.R. at 608–09 (finding that the "good faith requirement was met because, among other things, the debtor negotiated and reached agreements with several parties in interest to put forward a chapter 11 plan that, "in the aggregate[,] demonstrate[d] a good faith effort on the part of the debtor to consider the needs and concerns of all major constituencies in this case").

G. Section 1129(a)(4): The Plan Provides that Fee Claims are Subject to Court Approval.

51. Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." No party has objected to confirmation on the basis that the Plan fails to satisfy this provision of the Bankruptcy Code.

52. Section 1129(a)(4) has been construed to require that all payments of professional fees to be made from estate assets are subject to review and approval as to their reasonableness by the court. *See In re J. Reg. Co.*, 407 B.R. 520, 537 (Bankr. S.D.N.Y 2009) ; *accord In re TCI 2 Holdings, LLC*, 428 B.R. 117, 145 (Bankr. D.N.J. 2010) ("Under its clear terms, 'any payment' made or to be made by the plan proponent or the debtor for services 'in or in connection with' the plan or the case must be approved by or 'subject to the approval of' the bankruptcy court as 'reasonable.'"); *In re Texaco Inc.*, 84 B.R. 893, 907-08 (Bankr. S.D.N.Y. 1988).

53. Pursuant to the Plan, all payments for professional services provided to the Debtors or the Committee during the Chapter 11 Cases will be subject to approval by the Court as reasonable in accordance with section 1129(a)(4) of the Bankruptcy Code. Specifically, Article II.C of the Plan provides that all final applications for the payment of Professional Fees must be approved by the Bankruptcy Court as reasonable. Further, the Plan provides that the Bankruptcy Court will retain jurisdiction to "decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals pursuant to the Bankruptcy Code or the Plan." Plan, Art. XII.2. Therefore, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

H. Section 1129(a)(5): The Debtors Have Disclosed or Will Disclose All Necessary Information Regarding Directors, Officers, and Insiders to the Extent Known.

54. Section 1129(a)(5) of the Bankruptcy Code requires (a) that the plan proponent disclose the identity and affiliations of the proposed officers and directors of the debtor(s) as reorganized; (b) that the appointment or the continued appointment of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy; and (c) to the extent there are any insiders that will be retained or employed by the reorganized debtors, that the identity and nature of any compensation of any such insiders be disclosed. *See* 11 U.S.C. § 1129(a)(5). No party has objected to confirmation on the basis that the Plan fails to satisfy this provision of the Bankruptcy Code.

55. Article V.J of the Plan describes the manner in which the members of the Reorganized AVH Board will be selected. As set forth above, to the extent known and determined, the Debtors will disclose, or have disclosed as part of the Plan Supplement, the identity and affiliations of all individuals or entities proposed to serve as directors of the Reorganized Debtors. Further, Article V.J.2 of the Plan discloses that, except as otherwise set forth in the Plan

Supplement, the officers of the Debtors immediately before the Effective Date will serve as the initial officers of the respective Reorganized Debtors on and after the Effective Date. The appointment to, or continuance in, such positions of such persons is consistent with the interests of holders of Claims and Interests and public policy. Accordingly, section 1129(a)(5) of the Bankruptcy Code is satisfied.

I. Section 1129(a)(6): The Plan Does Not Contain Any Rate Changes.

56. Section 1129(a)(6) of the Bankruptcy Code requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." The Plan does not provide for any rate changes by the Debtors, and, therefore, section 1129(a)(6) is inapplicable.

J. Section 1129(a)(7): The Plan is in the Best Interests of All Creditors and Interest Holders.

57. Section 1129(a)(7) of the Bankruptcy Code requires that a plan be in the best interests of creditors and holders of equity interests in each Debtor, which is commonly referred to as the "best interests" test. No party has objected to confirmation on the basis that the Plan fails to satisfy this provision of the Bankruptcy Code.

58. The best interests test focuses on individual dissenting creditors, rather than on classes of claims or interests. *See 203 N. LaSalle,* 526 U.S. at 441 n.13; *Drexel Burnham Lambert Grp.*, 138 B.R. at 761 ("[T]he liquidation analysis applies only to non-accepting impaired claims or interests."). It requires that each holder of a claim or interest either (a) accept the plan or (b) receive or retain under the plan property having a present value, as of the effective date of the plan, not less than the amount such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code. *Adelphia Commc'ns*, 368 B.R. at 252 ("[T]he court must

measure what is to be received by rejecting creditors . . . under the plan against what would be received by them in the event of liquidation under chapter 7. In doing so, the court must take into consideration the applicable rules of distribution of the estate under chapter 7, as well as the probable costs incident to such liquidation."). When determining compliance with the best interests test, courts take into account the fact that "[t]he hypothetical liquidation entails a considerable degree of speculation about a situation that will not occur unless the case is actually converted to chapter 7." *In re Affiliated Foods, Inc.*, 249 B.R. 770, 788 (Bankr. W.D. Mo. 2000) (quoting *In re Sierra-Cal*, 210 B.R. 168, 172 (Bankr. E.D. Cal. 1997)); *accord In re W.R. Grace & Co.*, 475 B.R. 34, 142 (D. Del. 2012) ("[T]he court need only make a well-reasoned estimate of the liquidation value that is supported by the evidence on the record. It is not necessary to itemize or specifically determine precise values during this estimation procedure. Requiring such precision would be entirely unrealistic because exact values could only be found if the debtor actually underwent Chapter 7 liquidation.").

59. Thus, the best interests test does not apply to the holders of Claims or Interests in Class 1 (Priority Non-Tax Claims), Class 2 (Other Secured Claims), Class 5 (USAV Receivable Facility Claims), Class 6 (Grupo Aval Receivable Facility Claims), Class 8 (Grupo Aval Promissory Note Claims), Class 9 (Cargo Receivable Facility Claims), Class 10 (Pension Claims), Class 12 (General Unsecured Avifreight Claims), Class 13 (General Unsecured Aerounión Claims), Class 14 (General Unsecured SAI Claims), Class 17 (Intercompany Claims) (in the event that Intercompany Claims are Reinstated), Class 20 (Existing Avifreight Equity Interests), Class 21 (Existing SAI Equity Interests), and Class 23 (Intercompany Interests) (in the event that Intercompany Interests are Reinstated) because the Claims and Interests in these Classes are Unimpaired under the Plan (as they will either be Reinstated or their holders will receive

payment in full in Cash, be paid in the ordinary course, or otherwise receive treatment such that such holder's legal, equitable, or contractual rights will not be altered) and their holders are conclusively presumed to accept the Plan. Accordingly, the holders of the Claims or Interests in these Classes are receiving or retaining under the Plan the maximum recovery to which they are entitled and, as a result, could not receive greater recovery under a chapter 7 liquidation.

60. As set forth in the Hughes Declaration and the liquidation analysis annexed as Exhibit C to the Disclosure Statement (the "**Liquidation Analysis**"), the best interests test is satisfied as to every holder of a Claim or Interest in Class 3 (Engine Loan Claims), Class 4 (Secured RCF Claims), Class 7 (Grupo Aval Lines of Credit Claims), Class 11 (General Unsecured Avianca Claims), Class 15 (General Unsecured Convenience Claims), Class 16 (Subordinated Claims), Class 17 (Intercompany Claims) (in the event that Intercompany Claims are not Reinstated), Class 18 (Existing AVH Non-Voting Equity Interests), Class 19 (Existing AVH Common Equity Interests), Class 22 (Other Existing Equity Interests), and Class 23 (Intercompany Interests) (in the event that Intercompany Interests are not Reinstated). Pursuant to the Liquidation Analysis, holders of Claims in Classes 3, 4, and 7 are expected to receive substantially decreased recoveries in a hypothetical chapter 7 liquidation as compared to their recoveries under the Plan, and holders of Claims in Classes 11, 15, 16, 17, 18, 19, 22, 23 are expected to receive a 0% recovery in a hypothetical chapter 7 liquidation, which is equal to or less than the recoveries that such holders will receive under the Plan. *See* Hughes Dec., ¶ 17. Therefore, the Plan satisfies the best interests test under section 1129(a)(7).

K. Section 1129(a)(8) and (a)(10): The Plan Has Been Accepted by Impaired Classes Entitled to Vote.

61. As set forth in the Voting Certification, the Plan has been overwhelmingly accepted by creditors entitled to vote to accept or reject the Plan. In total, holders of Claims

totaling over $3.645 billion voted to accept the Plan—approximately 99% of the total amount of all Claims voted. The Plan has been accepted with respect to the Avianca Debtors by each Impaired Class entitled to vote to accept or reject the Plan, in each case without counting votes cast by any insider, thereby satisfying both the requirements of section 1129(a)(8) of the Bankruptcy Code, as well as the requirement that the Plan be affirmatively accepted by at least one Class of Impaired Claims pursuant to section 1129(a)(10) of the Bankruptcy Code.

62. Holders of Claims and Interests in Class 16 (Subordinated Claims), Class 17 (Intercompany Claims) (in the event that Intercompany Claims are not Reinstated), Class 18 (Existing AVH Non-Voting Equity Interests), Class 19 (Existing AVH Common Equity Interests), Class 22 (Other Existing Equity Interests), and Class 23 (Intercompany Interests) (in the event that Intercompany Interests are not Reinstated) are not receiving or retaining any property on account of their Claims or Interests and, thus, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Plan is nonetheless confirmable because, as discussed more fully *infra* Section I.Q, the Plan satisfies the "cram down" provisions of section 1129(b) of the Bankruptcy Code as to Classes 16, 17, 18, 19, 22, and 23.

L. Section 1129(a)(9): The Plan Provides for Payment in Full of All Allowed Priority Claims.

63. Section 1129(a)(9) of the Bankruptcy Code requires that persons holding allowed claims entitled to priority under section 507(a) of the Bankruptcy Code receive specified cash payments under a plan. Unless the holder of a particular claim entitled to priority under section 507(a) of the Bankruptcy Code agrees to alternative treatment with respect to such priority claim, section 1129(a)(9) of the Bankruptcy Code sets forth the treatment that must be included in a plan with respect to such claim.

64. The Plan complies with section 1129(a)(9) of the Bankruptcy Code. Except to the extent that a holder of an Allowed Administrative Expense and the applicable Debtor agree to alternative treatment (as with the DIP Facility Claims), the Plan provides that holders of Allowed Administrative Expenses will be paid in full in Cash (a) on the Effective Date, if such Administrative Expense is Allowed as of the Effective Date; (b) if not then due, when such Allowed Administrative Expense becomes due in the applicable Reorganized Debtor's ordinary course of business; or (c) if such Administrative Expense is not Allowed as of the Effective Date, upon entry of an order of the Court Allowing such Administrative Expense. *See* Plan, Art. II.A–.C. Moreover, the Plan provides that, except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment of such Claim, each such holder will (i) receive from the applicable Reorganized Debtor, in full and final satisfaction of its Priority Non-Tax Claim, payment, in Cash, equal to the Allowed amount of such Claim, on the later of the Effective Date and the date when its Priority Non-Tax Claim becomes due and payable in the ordinary course or (ii) be otherwise rendered Unimpaired. *See* Plan, Art. III.B.1. Thus, the Plan satisfies the requirements of sections 1129(a)(9)(A) and (B).

65. The Plan also satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code in respect of the treatment of Priority Tax Claims under section 507(a)(8). Pursuant to the Plan, except to the extent that an Allowed Priority Tax Claim has not been previously paid in full or its holder agrees to a less favorable treatment, in full and final satisfaction of each Priority Tax Claim, each holder of an Allowed Priority Tax Claim will be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. *See* Plan, Art. II.F.

66. Accordingly, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

M. Section 1129(a)(11): The Plan is Feasible.

67. Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court determine that the Plan is "feasible" as a condition precedent to confirmation. No party has objected to confirmation on this basis.

68. Section 1129(a)(11) requires a debtor to demonstrate that confirmation is not likely to be followed by liquidation of the debtor or the need for further reorganization, unless such liquidation or reorganization is proposed in the plan. The feasibility test is satisfied where, as here, a chapter 11 plan "offers a reasonable assurance of success." *Johns-Manville Corp.,* 843 F.2d at 649. "Success need not be guaranteed" for a debtor to satisfy the feasibility requirement under section 1129(a)(11) of the Bankruptcy Code; rather, the appropriate inquiry is whether a plan offers a reasonable probability of success. *Id.*

69. In assessing feasibility, courts have identified, among other things, the following probative factors:

- the prospective earnings of the business or its earning power;
- the soundness and adequacy of the capital structure and working capital for the business which the debtor will engage in post-confirmation;
- the prospective availability of credit;
- whether the debtor will have the ability to meet its requirements for capital expenditures;
- economic and market conditions;
- the ability of management and the likelihood that the same management will continue; and
- any other related factors which would materially reflect on the company's ability to operate successfully and implement its plan.

In re Prudential Energy Co., 58 B.R. 857, 86263 (Bankr. S.D.N.Y. 1986); *accord In re Finlay Enters., Inc*., No. 09-14873 (JMP), 2010 WL 6580629, at *2–6 (Bankr. S.D.N.Y. May 18, 2010); *In re Journal Register Co.*, 407 B.R. 520, 539 (Bankr. S.D.N.Y 2009) (explaining that the feasibility test amounts to "whether the things which are to be done after confirmation can be done as a practical matter under the facts"). As discussed below, the Plan is feasible within the meaning of section 1129(a)(11) of the Bankruptcy Code.

70. The Debtors, with the assistance of their advisors, prepared financial projections (the "**Financial Projections**") for fiscal years 2021 through 2028, which are set forth in Exhibit D to the Disclosure Statement. Pursuant to the Financial Projections, the Debtors project to generate substantial cashflow over the projection period. In particular, the Debtors expect to begin generating positive EBITDA during fiscal year 2022, and the EBITDA generated by the Reorganized Debtors is projected to materially increase on a year-over-year basis thereafter. This improved financial performance post-emergence is projected to result in net income of approximately $32 million in fiscal year 2023, which will increase to $447 million by fiscal year 2028. Additionally, based on the Financial Projections, the Reorganized Debtors will have the ability to make all the payments and distributions required pursuant to the Plan.

71. Therefore, the Debtors submit that the Plan is not likely to be followed by liquidation of the Reorganized Debtors or the need for further reorganization and that, accordingly, the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code.

N. Section 1129(a)(12): All Statutory Fees Have or Will be Paid.

72. Section 1129(a)(12) requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan" Section 507(a)(2) of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930] of title 28" are afforded priority as administrative expenses. In

accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, Article XIII.C of the Plan provides that on the Effective Date, and thereafter as may be required, such fees will be paid by the Debtors or the Reorganized Debtors, as applicable. No party has objected on the basis that the Plan fails to satisfy this provision of the Bankruptcy Code.

O. Section 1129(a)(13): Retiree Benefits Will Be Continued

73. Section 1129(a)(13) requires that:

> The plan provide[] for the continuation after its effective date of payment of all retiree benefits . . . at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

74. Pursuant to Article VI.H of the Plan, all retirement and supplemental retirement plans, programs, arrangements, and agreements will be assumed by the Debtors pursuant to the Plan, in accordance with section 1129(a)(13) of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129(a)(13).

P. Section 1129(a)(14), 1129(a)(15), 1129(a)(16): Inapplicable Provisions.

75. Sections 1129(a)(14) through 1129(a)(16) of the Bankruptcy Code are inapplicable to the Debtors. Section 1129(a)(14) relates to the payment of domestic support obligations. *See* 11 U.S.C. § 1129(a)(14). The Debtors are not subject to any domestic support obligations, and, thus, this subsection of section 1129(a) is inapplicable. Section 1129(a)(15) of the Bankruptcy Code applies only in cases in which the debtor is an "individual" (as that term is defined in the Bankruptcy Code). *See* 11 U.S.C. § 1129(a)(15). None of the Debtors is an "individual," and, accordingly, section 1129(a)(15) is inapplicable. Finally, section 1129(a)(16) of the Bankruptcy Code provides that property transfers by a corporation or trust that is not a moneyed, business, or commercial corporation or trust must be made in accordance with any

applicable provisions of non-bankruptcy law. *See* 11 U.S.C. § 1129(a)(16). Each Debtor is a moneyed, business, or commercial corporation; therefore, section 1129(a)(16) is inapplicable.

Q. Section 1129(b): The Plan Satisfies the "Cram Down" Requirements with Respect to Non-Accepting Classes.

76. As discussed above, the holders of Claims and Interests in Class 16 (Subordinated Claims), Class 17 (Intercompany Claims) (in the event that Intercompany Claims are not Reinstated), Class 18 (Existing AVH Non-Voting Equity Interests), Class 19 (Existing AVH Common Equity Interests), Class 22 (Other Existing Equity Interests), and Class 23 (Intercompany Interests) (in the event that Intercompany Interests are not Reinstated) are not receiving or retaining any property on account of their Claims or Interests and, thus, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtors submit that the Plan is nonetheless confirmable with respect to each such Class pursuant to section 1129(b) of the Bankruptcy Code.

77. Section 1129(b) of the Bankruptcy Code provides a mechanism (known colloquially as "cram down") for confirmation of a chapter 11 plan in circumstances where the plan is not accepted by all impaired classes of claims. No party with standing has objected on the basis that the Plan fails to satisfy this provision of the Bankruptcy Code. Under section 1129(b), the court may "cram down" a plan over the dissenting vote of an impaired class or classes as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes.

1. The Plan Does Not Discriminate Unfairly.

78. Section 1129(b)(1) does not prohibit discrimination between classes or claims or interests as long as such discrimination is not *unfair*. No party with standing has objected to Confirmation of the Plan on this basis.

79. Under section 1129(b) of the Bankruptcy Code, a plan unfairly discriminates where similarly situated claims or interests are treated differently without a reasonable basis for the disparate treatment. *In re Sabine Oil & Gas Corp.*, 555 B.R. 180, 310–11 (Bankr. S.D.N.Y. 2016) (finding that "[c]ourts generally will approve placement of similar claims in different classes provided there is a 'rational' or 'reasonable' basis for doing so"). As between two classes of claims or equity interests, a plan does not unfairly discriminate if (i) the classes are comprised of dissimilar claims or interests, *see, In re Johns-Manville Corp.,* 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for disparate treatment, *see, e.g., Drexel Burnham Lambert Grp.*, 138 B.R. at 715 (finding that separate classification and treatment is permissible if members of each relevant class "possess[] different legal rights").

80. Under the foregoing standards, the Plan does not "discriminate unfairly" with respect to Class 16 (Subordinated Claims), Class 17 (Intercompany Claims), Class 18 (Existing AVH Non-Voting Equity Interests), Class 19 (Existing AVH Common Equity Interests), Class 22 (Other Existing Equity Interests), or Class 23 (Intercompany Interests). The Claims and Interests in each such Classes are legally distinct in nature from the Claims and Interests in any other Class.

81. Therefore, given that the Claims and Interests in Classes 16, 17, 18, 19, 22, and 23 are "dissimilar" from the Claims and Interests in all other Classes, and the Plan thus does not provide any distributions on account of any similarly situated Claims or Interests, the Plan does not discriminate unfairly with respect to Class 16, Class 17, Class 18, Class 19, Class 22, and Class 23. Accordingly, the Plan does not unfairly discriminate with respect to any Class.

2. The Plan is Fair and Equitable.

82. Sections 1129(b)(2)(B)(ii) and (b)(2)(C)(ii) of the Bankruptcy Code provide that a plan is fair and equitable with respect to a rejecting class of impaired unsecured claims or interests if no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest. No party with standing has objected to Plan confirmation on the basis that the Plan is not fair and equitable.

83. Distributions under the Plan are made in the order of priority prescribed by the Bankruptcy Code and in accordance with the absolute priority rule. The "fair and equitable standard" is satisfied as to holders of Claims and Interests in Class 16 (Subordinated Claims), Class 17 (Intercompany Claims), Class 18 (Existing AVH Non-Voting Equity Interests), Class 19 (Existing AVH Common Equity Interests), Class 22 (Other Existing Equity Interests), and Class 23 (Intercompany Interests) because no Claims or Interests junior to the Claims or Interests in such Classes will receive or retain any property under the Plan on account of such junior Claims or Interests. *See In re Finlay Enters. Inc.*, No. 0914873 (JMP), 2010 WL 6580628, at *7 (Bankr. S.D.N.Y. June 29, 2010) (finding that the "fair and equitable" test is satisfied where no interest junior to interests of a rejecting class receive any property under a plan). Accordingly, the Plan is "fair and equitable" with respect to these Classes and, thus, the Plan may be confirmed under section 1129(b) of the Bankruptcy Code.

R. Sections 1121(a), 1129(c), 1129(d), and 1129(e) and Bankruptcy Rule 3016.

84. The Debtors are eligible debtors under section 109 of the Bankruptcy Code and are proper plan proponents under section 1121(a) of the Bankruptcy Code. The Plan is the only plan filed in these cases, and accordingly, section 1129(c) of the Bankruptcy Code is satisfied. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, as amended, and thus the Plan satisfies the requirements

of section 1129(d) of the Bankruptcy Code. The Chapter 11 Cases are not "small business case[s]," as that term is defined in the Bankruptcy Code, and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable. The Plan satisfies Bankruptcy Rules 3016(a) and (c) because the Plan is dated and identifies the proponents of the Plan as the Debtors and Article IX.G of the Plan describes in specific and conspicuous bold language all acts to be enjoined and identifies the entities that would be subject to the injunction.

S. Substantive Consolidation of Avianca Debtors Is Appropriate

85. Courts may exercise equitable powers to substantively consolidate the assets and liabilities of two or more debtors for the purpose of creating a single common pool of assets from which creditors may seek recovery on their claims. *See Union Sav. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 518 (2d Cir. 1988) ("*Augie/Restivo*") ("Substantive consolidation has no express statutory basis but is a product of judicial gloss."); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 723, 764 (Bankr. S.D.N.Y. 1992); *see also In re Donut Queen, Ltd.*, 41 B.R. 706, 708–09 (Bankr. E.D.N.Y.1984) (holding that the power of the court to substantively consolidate separate corporate debtors arises from section 105(a) of the Bankruptcy Code).

86. In airline cases, substantive consolidation has been granted frequently—indeed, in the Second Circuit, substantive consolidation was permitted in all six airline bankruptcy cases where debtors sought the remedy. *See* Order Confirming Debtors' J. Chapter 11 Plan 17, *AMR*, No. 11-15463, [ECF 10367]; Order Confirming Debtors' J. Plan of Reorganization 15, *Delta*, No. 05-17923, [ECF 5998]; Order Confirming Debtors' J. Plan of Reorganization 13, *Pinnacle*, No. 12-11343, [ECF 1157]; Order Confirming Debtors' J. Plan of Reorganization 13, *Frontier*, No. 08-11298, [ECF 1069]; *In re Republic Airways Holdings Inc.*, 565 B.R. 710, 721-22 (Bankr. S.D.N.Y. 2017) *aff'd, In re Republic Airways Holdings Inc*., 582 B.R. 278 (S.D.N.Y.

2018); Hr'g Tr. 100:20-21, *In re: Northwest Airlines Corp.*, No. 05-17930 (Bankr. S.D.N.Y. May 9, 2007), [ECF 6927].

87. In the Second Circuit, courts apply the so-called *Augie/Restivo* test when assessing the propriety of substantive consolidation. Under this test, a court may order substantive consolidation over the objection of a party in interest only when the proponent of substantive consolidation establishes one of the following two independent bases: [12]

> (i) creditors dealt with the debtor entities proposed to be substantively consolidated as a single economic unit and did not rely on their separate identities in extending credit ("Creditor Reliance"); ***or***
>
> (ii) the affairs of the debtor entities proposed to be consolidated are so entangled that substantive consolidation will benefit all creditors of the consolidated estate ("Hopeless Entanglement").

Augie/Restivo, 860 F.2d at 518.

88. Courts have significant discretion to consider various factors, which can be used interchangeably for both the Creditor Reliance and Hopeless Entanglement prongs of the test, when determining whether substantive consolidation is appropriate. Those factors include (but are not limited to):

- the existence of operational entanglement; [13]

[12] "Conceivably, substantive consolidation could be warranted on either ground; the Second Circuit's use of the conjunction 'or' suggests that the two cited factors are alternatively sufficient criteria." *In re 599 Consumer Electronics, Inc.*, 195 B.R. 244, 248 (S.D.N.Y. 1996).

[13] *See e.g., In re Drexel Burnham Lambert Group, Inc.*, 138 B.R 723, 741 (Bankr. S.D.N.Y. 1992) (approving substantive consolidation where all support functions, including finance, legal, administrative, operations clearing systems, communications, mailroom, internal audit and external audit were provided by one debtor entity); *In re Republic Airways Holdings, Inc.*, 565 B.R. at 717; *In re WorldCom, Inc.*, 2003 WL 23861928, at *37 (Bankr. S.D.N.Y. Oct. 31, 2003) (noting debtors "operate a single business under a single business plan" and finding that the debtors demonstrated operational and financial entanglement of their business affairs, warranting substantive consolidation).

- the existence of guarantees and intercompany loans; [14]
- public perception of the debtors;[15]
- shared cash management systems and intercompany transfers;[16]
- shared decision-making and control processes; [17] and
- whether substantive consolidation would facilitate a timely confirmation of the debtors' plan and aid the debtors' rehabilitation.[18]

89. The substantive consolidation of the Debtors with one another—except for Aerounión, Avifreight, and SAI (the "Avianca Debtors")—for the purposes of the Plan satisfies the *Augie/Restivo* standard. Untangling each Avianca Debtor's separate assets and liabilities would be extremely expensive, time-consuming, and difficult. *See* Hughes Dec., ¶ 22. The Avianca Debtors act under one umbrella brand of "Avianca" and it is common for the Avianca Debtors to routinely transfer assets and incur liabilities based on the Avianca Debtors' needs as a

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[14] *See e.g., In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. at 741-45, 761-767 (approving substantive consolidation and noting it was "customary for customers, creditors, and counterparties to seek guarantees of DBL Group."); *In re Republic Airways Holdings, Inc.*, 565 B.R. at 719 (finding significant overlap in creditor pools due to intercompany guarantees to be a factor in favor of consolidation).

[15] *See e.g., Drexel Burnham Lambert Group, Inc.*, 138 B.R at 744 (noting that debtor entities to be consolidated "did not advertise in their own names and did not hold themselves out to the public as independent entities"); *In re Republic Airways Holdings Inc.*, 565 B.R. 710, 720 (approving substantive consolidation and pointing to testimony of debtor's CEO stating: "We don't hold ourselves out as Shuttle America or Chautauqua or Republic, the airline, or Republic Holdings on our website. We just hold ourselves out as Republic.").

[16] *See e.g., In re Republic Airways Holdings, Inc.*, 565 B.R. at 719 (noting debtors use of the same cash management system in approving substantive consolidation).

[17] *See e.g., In re Republic Airways Holdings, Inc.*, 565 B.R. at 716-17 (citing *In re WorldCom, Inc.*, 2003 WL 23861928, at *35) (noting that a factor favoring substantive consolidation is the "common management and control of the Debtors"); *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R at 764 (noting "the directors of the subsidiary not acting independently in the interest of the subsidiary, but taking direction from the parent" as a factor in considering whether consolidation is warranted).

[18] *See e.g., In re Republic Airways Holdings Inc*, 565 B.R. at 721 (finding substantive consolidation appropriate where a delayed confirmation would adversely affect pilot hiring and lead to underperformance, which would lead to diminished unsecured creditor recoveries)*; In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. at 767 ("Without the consolidation, no reorganized entity will emerge, thus thwarting a primary goal of the Bankruptcy Code—rehabilitation and reorganization.").

whole. *See* Hughes Dec., ¶ 20. [19] Assigning true value to each Avianca Debtor is nearly impossible, as the vast majority of business decisions are made on a consolidated basis. *Id*.

90. Further, the value of the Avianca Debtors, and in turn the value available to their creditors, is maximized by the sum of the parts of the Avianca Debtors—when separated, the Avianca Debtors have materially less value available for distribution. *See* Hughes Dec., ¶ 22. And substantive consolidation allows the Global Plan Settlement to appropriately address the cross-guarantees that were frequently given to creditors by the Avianca Debtors in connection with various transactions. *See* Hughes Dec., ¶ 23.

91. Finally, the Tranche B Lenders' commitments to convert their Tranche B DIP Facility Claims into equity of the Reorganized Debtors and to make the Tranche B Equity Contribution are tied to the confirmation and consummation of this Plan, which includes substantive consolidation of the Avianca Debtors and the Global Plan Settlement. There are no assurances that the Tranche B Lenders would agree to convert their Tranche B DIP Facility Claims on the same terms or to contribute additional capital under any other Plan. *See* Hughes Dec., ¶ 23. If the Tranche B Lenders fail to convert their Tranche B DIP Facility Claims or to provide the additional capital under the Plan, the Debtors will be severely harmed in their rehabilitation efforts and may have to delay emergence from these Chapter 11 Cases.

92. For all of these reasons, substantive consolidation of the Avianca Debtors is not only appropriate under the *Augie/Restivo* standard, but necessary for the Global Plan Settlement.

[19] For this reason, creditors commonly view the Sub Con Debtors as one single economic unit, thus, satisfying the Creditor Reliance justification.

T. Procedures Relating to Assumption and Rejection of Executory Contracts and Unexpired Leases Are Appropriate

93. Article VI.A of the Plan sets forth various procedures with respect to the assumption, assumption and assignment, and rejection of Executory Contracts and Unexpired Leases (the "**Assumption and Rejection Procedures**"), including the Debtors' right to designate Executory Contracts and Unexpired Leases for assumption through the Effective Date by amending the Schedule of Assumed Contracts through such date. The Debtors submit that these procedures comply with the Bankruptcy Code and are appropriate under the circumstances. No party has objected to Confirmation of the Plan on the basis that the Assumption and Rejection Procedures are improper.

94. Although section 365(d)(2) of the Bankruptcy Code provides that the a chapter 11 debtor may assume or reject an executory contract or an unexpired lease "at any time before the confirmation of the plan," courts and commentators have found this language not to constitute a temporal limitation. See 3 Collier on Bankruptcy ¶ 365.05[2][d] (Alan N. Resnick & Henry J. Somer, 16th ed. 2016) ("Assumption or rejection is permitted postconfirmation.") This is confirmed by similarly permissive language in section 1123(b)(2), which states that a chapter 11 plan "***may*** . . . subject to section 365 . . . ***provide for*** the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected." 11. U.S.C. § 1123(b)(2) (emphasis added). Interpreting section 365(d)(2) together with section 1123(b)(2), courts have observed that "two fundamental points emerge: (1) a trustee may, but is not required to, assume or reject an executory contract before plan confirmation; and (2) if a contract is not assumed or rejected pre-confirmation, the plan itself may provide for assumption or rejection." *DJS Props., L.P. v. Simplot*, 397 B.R. 493, 498 (D. Idaho 2008); *see also In re Triangle USA Petroleum Corp.*, No. 16-11566 (MFW), Hr'g Tr. at 111:22–23 (Bankr. D. Del. Mar. 10, 2017)

(finding that sections "365(d)(2) and 1123 both use permissive language"). Because section 365(d)(2) and section 1123(b)(2) are permissive, "nothing expressly prohibits a plan from 'providing' for assumption or rejection by selecting a post-confirmation date for that action." *DJS Props.*, 397 B.R. at 498; *accord Triangle USA*, Hr'g Tr. at 111:24–112:1 ("Congress knows when to set an absolute deadline, and I don't think the language used by Congress in these two provisions is that.").

95. Thus, the Assumption and Rejection Procedures conform with the applicable provisions of the Bankruptcy Code. Numerous courts have confirmed chapter 11 plans that permit the debtors to assume or reject executory contracts through the effective date of the plan. *See, e.g.*, *In re Northwest Hardwoods, Inc.*, No. 20-13005 (Bankr. D. Del. 2020) [ECF No. 175] (confirming a plan that provided for assumption and rejection of executory contracts and unexpired leases prior to the effective date of the plan); *In re RentPath Holdings, Inc.*, No. 20-10312 (Bankr. D. Del. 2020) [ECF No. 900] (up to and including five calendar days prior to the effective date of the plan); *In re Diamond Offshore Drilling, Inc.*, No. 20-32307 (Bankr. S.D. Tex. 2020) [ECF No. 1231-1] (up to and including the effective date of the plan); *In re J.C. Penney Co., Inc.*, No. 20-33801 (Bankr. S.D. Tex. 2020) [ECF No. 2190] (up to and including the effective date of the plan).

96. Indeed, courts have also confirmed chapter 11 plans that permit the debtors to assume or reject executory contracts ***after*** the effective date of the plan. *See, e.g.*, *In re Frontier Communications Corp.*, No. 20-22476 (Bankr. S.D.N.Y. 2020) [ECF No. 1005] (confirming a plan that provided for assumption and rejection of executory contracts and unexpired leases forty-five days after the effective date of the plan); *In re Washington Prime Group Inc.*, No. 21-31948 (Bankr. S.D. Tex. 2021) [ECF No. 1022] (forty-five days after the effective date of the plan); *In*

re Frontera Holdings, L.L.C., No. 21-30354 (Bankr. S.D. Tex. 2021) [ECF No. 263] (sixty days after the effective date of the plan); *In re Ferrellgas Partners, L.P. & Ferrellgas Partners Fin. Corp.*, No. 21-10021 (Bankr. D. Del. 2021) [ECF No. 203] (thirty days after the effective date of the plan); *In re Covia Holdings Corp.*, No. 20-33295 (Bankr. S.D. Tex. 2020) [ECF No. 1029] (forty-five days after the effective date of the plan); *In re Ultra Petroleum Corp.*, No. 20-32631 (Bankr. S.D. Tex. 2020) [ECF No. 735] (forty-five days after the effective date of the plan); *In re McDermott Int'l, Inc.*, No. 20-30336 (Bankr. S.D. Tex. 2020) [ECF No. 665] (forty-five days after the effective date of the plan); *In re Seadrill Partners L.L.C.*, No. 20-35740 (Bankr. S.D. Tex. 2020) [ECF No. 570] (forty-five days after the effective date of the plan); *In re smarTours, L.L.C.*, No. 20-12625 (Bankr. D. Del. 2020) [ECF No. 195] (sixty days after the effective date of the plan); *In re Tailored Brands, Inc.*, No. 20-33900 (Bankr. S.D. Tex. 2020) [ECF No. 1221] (forty-five days after the effective date of the plan); *In re California Pizza Kitchen, Inc.*, No. 20-33752 (Bankr. S.D. Tex. 2020) [ECF No. 600] (thirty days after the effective date of the plan).

97. Additionally, a debtor may place conditions on the assumption of an executory contract or an unexpired lease, including a condition based on a future event. *See Triangle USA*, Hr'g Tr. at 112:14–15 ("[T]he absolute decision made by the debtor to assume or reject can be conditioned on a future event."). A debtor may, for example, condition assumption of an executory contract or unexpired lease on the execution of definitive documentation amending such contract or lease. *See In re Claire's Stores, Inc.*, No. 18-10584 (MFW) (Bankr. D. Del. Sept. 21, 2018) {ECF 1032-2] (providing for the assumption of unexpired leases "[u]pon the successful execution of lease amendments and other documentation satisfactory to the Debtors" and providing for the rejection of such unexpired leases "to the extent the Debtors are unable to agree to satisfactory amendments"). The Assumption and Rejection Procedures provide for such

conditionality with respect to certain Aircraft Leases, which are subject to ongoing negotiations with respect to amendments and/or definitive documentation. This conditionality is critical to the Debtors achieving their restructuring goals and emerging from chapter 11 on their current timeline. *See In re J.M. Fields, Inc.*, 26 B.R. 852, 857 (Bankr. S.D.N.Y. 1983) ("Requiring final determination prior to confirmation of all applications to reject a lease . . . would postpone confirmation of a debtor's plan of arrangement, thus impeding the debtor's rehabilitation and return to the marketplace[, which] thwarts the very aim of reorganization proceedings.").

98. Accordingly, the Debtors submit that the Assumption and Rejection Procedures are appropriate and comply with section 1123(b)(2) of the Bankruptcy Code.

U. Section 1127: Modification of the Plan.

99. Pursuant to section 1127 of the Bankruptcy Code, a plan proponent may modify a plan at any time before confirmation so long as the plan, as modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code and the proponent of the modification complies with section 1125 of the Bankruptcy Code. In addition, with respect to modifications made after acceptance but prior to confirmation of the plan, Bankruptcy Rule 3019 provides, in relevant part:

> [A]fter a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Fed. R. Bankr. P. 3019(a).

100. The Debtors have made certain technical modifications to the Plan to, among other things, resolve certain informal comments that the Debtors received from various

parties in interest and to clarify certain provisions of the Plan. As discussed above, the Plan, as modified, complies with sections 1122 and 1123 of the Bankruptcy Code, and the Debtors have complied with section 1125 of the Bankruptcy Code, and thus the requirements of section 1127 have been satisfied. Further, given that the modifications to the Plan were technical in nature and none of the modifications "adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification," the requirements of Bankruptcy Rule 3019(a) has been satisfied. Fed. R. Bankr. P. 3019(a).

II. THE OBJECTIONS TO THE PLAN SHOULD BE OVERRULED AND THE PLAN CONFIRMED

101. The Debtors received, in essence, only two (2) substantive Objections to Confirmation of the Plan: one Objection filed by Burlingame Investment Partners LP ("**Burlingame**"), which is a holder of 2023 Notes Claims,[20] and another filed by counsel on behalf of various other holders of 2023 Notes Claims (the "**Noteholder Objectors**"). Burlingame and the Noteholder Objectors raise an assortment of arguments with respect to the classification of, and treatment provided for, 2023 Notes Claims. Each of these arguments is meritless, and, for the reasons set forth below, the Court should overrule each of the Noteholder Objections.

[20] Initially, Blake W. Kim, acting *pro se*, filed an objection on behalf of Burlingame [Docket No. 2188]. The Court entered an order striking Kim's *pro se* objection (the "**Stricken Kim Objection**") on the grounds that Kim is not admitted to practice law before the Court and Burlingame may only appear, file pleadings, and be heard by a lawyer admitted to practice before the Court. *See* [Docket 2211]. Thereafter, counsel filed an objection on behalf of Burlingame and various individual IRAs managed by Burlingame (the "**Consolidated Burlingame Objection**"). In addition, several of the same individual IRAs filed their own *pro se* objections to the Plan, that are ***substantively identical*** to the Stricken Kim Objection and the Consolidated Burlingame Objection. Given that each of the individual IRAs is represented by counsel who filed an objection on their behalf, the individual *pro se* objections should be stricken.

Regardless, because all Noteholder Objections filed by the Burlingame-affiliated parties are, as noted above, substantively identical, the Debtors respond to the arguments raised therein on a consolidated basis and refer to the Burlingame-affiliated parties collectively as "Burlingame," rather than responding to each Burlingame-affiliated party's Objection individually.

A. 2023 Notes Claims Are Unsecured and Properly Classified

102. Both Burlingame and the Noteholder Objectors assert that the Debtors have not demonstrated that the 2023 Notes are unsecured Claims and, thus, that 2023 Notes Claims are improperly classified in Class 11 (General Unsecured Avianca Claims). Burlingame and the Noteholder Objectors ignore the fact that, as set forth in the Disclosure Statement, the Debtors indeed have conducted a valuation of their assets, including the Shared Collateral, as part of the Equity Solicitation Process (defined below).

103. As set forth in the Neuhauser Declaration (and as previously disclosed in the Disclosure Statement), the Debtors engaged in a competitive marketing process (the "**Equity Solicitation Process**") to determine whether an alternative investor (or group of investors) would be willing to provide capital to the Reorganized Debtors on terms superior to those offered by the Tranche B DIP Lenders, which, as part of the DIP Credit Agreement, committed to convert all of the Tranche B DIP Facility Claims to at least 72% of fully diluted equity interests in Reorganized AVH. Ultimately, however, the Equity Solicitation Process yielded only one indication of interest, which did not offer sufficient value to satisfy all Tranche B DIP Facility Claims (totaling approximately $837 million) in full in Cash. Thus, a competitive marketing process, which this Court has found to be "a true test of value," did not support a valuation of the Debtors—which, invariably, encompassed a valuation of the Shared Collateral—that exceeds the Allowed amount of the Tranche B DIP Facility Claims. Accordingly, based on the market evidence generated by the Equity Solicitation Process, the value of the Shared Collateral is not sufficient to satisfy Tranche B DIP Facility Claims in full. See, e.g., *In re Boston Generating, LLC*, 440 B.R. 302, 324 (Bankr. S.D.N.Y. 2010) ("Because the Debtors' sale process was heavily marketed and potential buyers were presented with abundant information, the sale process reflects a ***true test of***

value." (emphasis added)); *accord In re Chemtura Corp.*, 439 B.R. 561, 586–87 (Bankr. S.D.N.Y. 2010).

104. Pursuant to the Final DIP Order, the Liens on the Shared Collateral securing the DIP Facility prime the Liens on the Shared Collateral securing the 2023 Notes, and the DIP Facility Claims "***shall** be* satisfied ***first*** from proceeds of the Shared Collateral." Final DIP Order, ¶ 28 (emphasis added). As the value of the Shared Collateral is ***less*** than the Allowed amount of the Tranche B DIP Facility Claims, and such Claims must be satisfied from the Shared Collateral before any other Claims may have recourse thereto, 2023 Notes Claims are ***unsecured*** pursuant to section 506(a) of the Bankruptcy Code.[21]

105. Therefore, because 2023 Notes Claims are unsecured, such Claims are "substantially similar" to the other unsecured Claims classified in Class 11, and the classification of 2023 Notes Claims is proper pursuant to section 1122(a) of the Bankruptcy Code.

B. Section 1129(b) is Not Applicable

106. Burlingame and the Noteholder Objectors also appear to argue that the Plan treatment of 2023 Notes Claims violates section 1129(b) of the Bankruptcy Code. However, section 1129(b) only applies to a class of impaired claims that "***has not accepted*** . . .the plan." 11 U.S.C. § 1129(b)(1) (emphasis added). As set forth in the Voting Certification, Class 11 has accepted the Plan in accordance with section 1126 of the Bankruptcy Code. Moreover, as demonstrated below, even if 2023 Notes Claims were separately classified in a Class of their own, that Class would have similarly accepted the Plan:

[21] To the extent that Burlingame or the Noteholder Objectors assert that the DIP Facility improperly primed their security interest in the Shared Collateral, such an assertion is an untimely collateral attack on the Final DIP Order, which has been a Final Order for over a year.

Class	% Number Accepted	% Amount Accepted	% Number Rejected	% Amount Rejected	Class Accept / Reject
Avianca Debtors					
Class 11 2023 Notes Claims (*excluding all other General Unsecured Avianca Claims*)	83.73%	77.49%	16.27%	22.51%	**Accept**

107. Therefore, any arguments raised by Burlingame and the Noteholder Objectors with respect to the "fair and equitable" and/or "unfair discrimination" provisions of section 1129(b) of the Bankruptcy Code are simply not applicable.

C. Substantive Consolidation Is Appropriate

108. Both Burlingame and the Noteholder Objectors assert that the Debtors have failed to meet their burden to demonstrate that substantive consolidation of the Avianca Debtors is appropriate. This argument has no merit. As discussed *supra* section I.S, the Debtors have satisfied the *Augie/Restivo* test for substantive consolidation of the Avianca Debtors.

109. In addition, as discussed in detail above, the DIP Facility is secured—in part—by the Shared Collateral, and the DIP Facility Claims will have to be satisfied first from the proceeds of that Shared Collateral. Because the value of the Shared Collateral does not exceed the Allowed amount of the Tranche B DIP Facility Claims, after the DIP Facility Claims are satisfied, no value will be available to satisfy the 2023 Notes Claims. Accordingly, 2023 Note Claims will be treated exactly the same regardless of whether or not the Avianca Debtors are consolidated.

110. Burlingame further asserts that, if the Court finds that substantive consolidation is warranted in these cases, SAI, Aerounión, and Avifreight should not be excluded from such consolidation. However, exclusion of SAI, Aerounión, and Avifreight from the Avianca

Debtors is appropriate because, unlike the Avianca Debtors, consolidation of these entities would not pass the *Augie/Restivo* test, as their assets and liabilities are not hopelessly entangled with the other Avianca Debtors. As set forth in the Hughes Declaration, these three entities maintain separate operations. *See* Hughes Dec., ¶ 25–29. Indeed, SAI and Aerounión operate separate accounting and treasury systems, which the Avianca Debtors cannot access. *See* Hughes Dec., ¶ 27. Further, the services of SAI, Aerounión, and Avifreight are not marketed by the Debtors as part of the "Avianca" brand. *See* Hughes Dec., ¶ 25.

111. Accordingly, the exclusion of SAI, Aerounión, and Avifreight from the Avianca Plan Consolidation is appropriate and warranted.

D. Other Arguments Are Meritless

112. All other arguments raised by Burlingame in its Objection are also meritless. With respect to Burlingame's assertion that the Debtors have somehow violated their obligations under the DIP Credit Agreement's "use of proceeds" provision, Burlingame lacks standing to raise such argument because it is not party to the DIP Credit Agreement (moreover, even if Burlingame had standing to raise such argument, it would not be a basis for the Court to deny Confirmation of the Plan). Furthermore, Burlingame's assertion that the Debtors "violat[ed] section 548" of the Bankruptcy Code simply makes no sense—section 548 provides ***the Debtors*** with the right to bring certain causes of action against third parties, and it is not possible for a debtor in possession to violate it.

III. CONCLUSION.

113. Based upon the foregoing, the Plan complies with and satisfies all the applicable requirements of section 1129 of the Bankruptcy Code and should be confirmed, and all Objections to confirmation of the Plan should be overruled.

114. Accordingly, the Debtors respectfully request entry of the Proposed Confirmation Order and such other and further relief as the Court may deem just and appropriate.

Dated: October 24, 2021
New York, New York

/s/ Evan R. Fleck

Dennis F. Dunne
Evan R. Fleck
Benjamin Schak
Kyle R. Satterfield
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

-and-

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

Counsel for Debtors
and Debtors in Possession

Exhibit A to Memorandum

Objection Response Chart

No.	Dkt. No.	Filing Party	Summary of Objection	Status	Response
1.	2188	Burlingame Investment Group LLC	The Objecting Party asserts that (i) Debtors are using DIP proceeds to object to the priority of the 2023 Notes that did not participate in the DIP roll-up in violation of the DIP Credit Agreement, (ii) Debtors improperly classified the 2023 Notes as unsecured claims because they have not proven that the 2023 Notes are out of the money.	Struck	This objection was struck by Court order. *See* Docket No. 2211.
2.	2214	William B. Meier	Identical in substance to objection by Burlingame Investment Group LLC [Docket No. 2188]	Open	The Debtors have addressed the substance of this Objection in the Memorandum and submit that the arguments raised are meritless.
3.	2215	Blake W. Kim	Identical in substance to objection by Burlingame Investment Group LLC [Docket No. 2188]	Open	The Debtors have addressed the substance of this Objection in the Memorandum and submit that the arguments raised are meritless.
4.	2218	Burlingame Investment Group LLC	Identical in substance to objection by Burlingame Investment Group LLC [Docket No. 2188], but re-filed through counsel.	Open	The Debtors have addressed the substance of this Objection in the Memorandum and submit that the arguments raised are meritless.
5.	2222	Im Jo Degerman	Identical in substance to objection by Burlingame Investment Group LLC [Docket No. 2188]	Open	The Debtors have addressed the substance of this Objection in the Memorandum and submit that the arguments raised are meritless.

No.	Dkt. No.	Filing Party	Summary of Objection	Status	Response
6.	2227	David M. Kang	Identical in substance to objection by Burlingame Investment Group LLC [Docket No. 2188]	Open	The Debtors have addressed the substance of this Objection in the Memorandum and submit that the arguments raised are meritless.
7.	2219	General Directorate of Treasury of El Salvador	The Objecting Party asserts that the Plan should provide for the payment of approximately $89 million in purported tax debts.	Open	El Salvador has filed what appears to be a *pro se* letter entitled "Presentation of disagreement with the business restructuring plan of Avianca Holdings S.A." The letter asserts that various Debtors owe substantial tax obligations to El Salvador. The Debtors dispute the validity of El Salvador's asserted claims, and in any case no such claims have been presented through the filing of a proof of claim. To the extent that El Salvador's letter is a cognizable objection to confirmation, it should be overruled because the Plan provides treatment of tax claims (including any Priority Tax Claims) that is consistent with the Bankruptcy Code. *See* Brief at § I.L.

No.	Dkt. No.	Filing Party	Summary of Objection	Status	Response
8.	2231	Udi Baruch Guindi, David Baruch, Soshana Baruch, Habib Mann, Golan LP and Isaak Baruch	The Objecting Parties assert that (i) the Debtors have failed to meet their burden to prove why substantive consolidation is appropriate or, if it is, why three Debtors are excluded from substantive consolidation, and (ii) the Plan is unfairly discriminatory because it does not provide evidence that the value of collateral securing the 2023 Notes is insufficient to fully repay them but claims for 2023 Notes are not paid in full as other secured creditors are.	Open	The Debtors have addressed the substance of this Objection in the Memorandum and submit that the arguments raised are meritless.
9.	2238	Texas Comptroller of Public Accounts; Unclaimed Property Division	The Objecting Party asserts that Debtors may hold unclaimed property, which, under Texas law, is held in trust and is therefore not property of the estate under the Bankruptcy Code. The Texas Comptroller may pursue recovery of any unclaimed property if it determines such property exists. The Objecting Party is filing their objection out of an abundance of caution and to ask that language be added to the Confirmation Order preserving the rights of the State of Texas and of the Debtors with respect to the audit that the Texas Comptroller of Public Accounts is currently conducting and any subsequent attempt to recovery unclaimed property.	Resolved	The Debtors have resolved this objection by inclusion of language in the Confirmation Order.
10.	2240	U.S. Trustee	The United States Trustee asserts that the Debtors should have used an opt-in procedure for the Third Party Releases contained in the Plan and reserves the right to object to the extent there were any holders of claims who were not afforded the opportunity to opt out of the Third Party Releases.	No objection filed	The Debtors complied with the procedures set forth in the Disclosure Statement Order with respect to the solicitation of votes on the Plan.

No.	Dkt. No.	Filing Party	Summary of Objection	Status	Response
11.	[none]	Centro Farmacéutico de la Fuerza Armada de El Salvador (CEFAFA)	In an unfiled letter addressed to the Court and delivered by email to the Debtors, CEFAFA asserts that it did not receive its ballot in time to submit a vote.	No objection filed	The Debtors complied with the procedures set forth in the Disclosure Statement Order with respect to the solicitation of votes on the Plan. The Debtors have no control over individual brokers' delivery of beneficial holder ballots to their customers.

Exhibit A-1 to Memorandum

Contract Objection Chart

No.	Dkt. No.	Counterparty	Summary of Objection	Status	Response
1.	2237	Asociación Colombiana de Aviadores Civiles ("ACDAC")	The Objecting Party asserts that the proper Cure Amounts for its contracts that the Debtors will assume are the following: 1. The equivalent of 50% of the salary increases for pilots covered by the *Convención Colectiva de Trabajo ACDAC 2009–2013* (exact amount unknown) [Proof of Claim No. 1715]; 2. 33,287,735,736 COP (approximately USD$8,485,924) [Proof of Claim No. 1701]; 3. The equivalent of the incentive and bonus amounts Avianca pays to nonunion pilots (exact amount unknown) [Proof of Claim No. 1729]; and 4. 1,794,710,254 COP (approximately USD$457,519) [Proof of Claim No. 1708].	Open	ACDAC is a union that represents many of the Debtors' pilots. The Debtors disagree with the substance of ACDAC's proofs of claim,[1] but the parties are engaged in settlement discussions. To allow those settlement discussions to progress, the Debtors propose that ACDAC's cure objection be adjourned to the omnibus hearing on November 18, 2021, pursuant to Article VI.C. of the Plan.
2.	2228	Boeing Company; Boeing US Training and Flight Services LLC	Objecting Parties assert that the total Cure Amount for Boeing Company is $5,585.02 and the total Cure Amount for Boeing US Training and Flight Services LLC is $55,769.87.	Adjourned	In accordance with Article VI.C of the Plan, this Contract objection has been adjourned with the consent of the counterparty to the hearing to be held on November 18, 2021.

[1] In short, Claim No. 1701 is meritless because the Debtors' non-unionized pilots have not benefited from ACDAC's collective bargaining agreement as ACDAC asserts; Claim No. 1708 seeks payment of ACDAC's legal fees, which is inconsistent with Colombian law; ACDAC has indicated to the Debtors that it intends to withdraw Claim No. 1712; Claim No. 1715 seeks recovery of amount that have already been paid to the Debtors' pilots; and Claim No. 1729 seeks the payment of certain bonuses that are due, if at all, to the individual pilots who are represented by ACDAC.

No.	Dkt. No.	Counterparty	Summary of Objection	Status	Response
3.	2242	Getcom Internacional S.A de CV, Getcom Servicios SAS, and Getcom Colombia S.A.S.	The Objecting Party seeks clarification as to which contracts with it the Debtors plan to assume and filed this Objection to preserve its rights.	Resolved / Adjourned	The Debtors have agreed to revise the Schedule of Assumed Contracts to clarify which Executory Contracts will be assumed. The parties have agreed to defer any cure dispute to the November 18 omnibus hearing.
4.	2254	Google LLC	The counterparty asserts there is a Cure Amount of approximately USD$1.1 million.	Adjourned	In accordance with Article VI.C of the Plan, this Contract objection has been adjourned with the consent of the counterparty to the hearing to be held on November 18, 2021.
5.	2233	IAD Fuels LLC	Objecting Party asserts that the total Cure Amount is $80,523.51 and seeks clarification as to which contracts with it the Debtors plan to assume and filed this Objection to preserve its rights.	Resolved	Debtors have amended the Cure Amount in the Schedule of Assumed Contracts. *See* Docket No. 2208, Sch. E-1, row 1455.
6.	2229	International Air Transport Association	The Objecting Party seeks clarification as to which contracts with it the Debtors plan to assume and filed this Objection to preserve its rights.	Resolved	The Debtors have agreed to revise the Schedule of Assumed Contracts to clarify which Executory Contracts will be assumed.
7.	2234	IAH Fuel Company LLC	Objecting Party asserts that the total Cure Amount is $4,869.74 and seeks clarification as to which contracts with it the Debtors plan to assume and filed this Objection to preserve its rights.	Resolved	Debtors have amended the Cure Amount in the Schedule of Assumed Contracts. *See* Docket No. 2208, Sch. E-1, row 1457.
8.	2235	Laxfuel Corporation	Objecting Party asserts that the total Cure Amount is $30,169.66 and seeks clarification as to which contracts with it the Debtors plan to assume and filed this Objection to preserve its rights.	Resolved	Debtors have amended the Cure Amount in the Schedule of Assumed Contracts. *See* Docket No. 2208, Sch. E-1, row 1918.

No.	Dkt. No.	Counterparty	Summary of Objection	Status	Response
9.	2232	Oracle Colombia Ltda. and Oracle America, Inc., successor in interest to Hyperion Systems Solutions and Global Knowledge	The Objecting Parties assert that (i) the Debtors cannot assume the agreements they have with the Objecting Parties without the Objecting Parties' consent, as the agreements are for licenses of intellectual property, and (ii) the Debtors have omitted certain active agreements with Oracle, which will be rejected under the Plan's default rejection provisions, causing Oracle to be unable to determine an appropriate cure amount.	Open, but expected to be resolved prior to Confirmation	The "Corporate Pricing Agreement" addressed by Oracle's objection is not an IP license. The Debtors have been in discussions with Oracle's regarding this and other Executory Contracts and expect to resolve this limited objection (except as to any cure dispute) by filing an amended Schedule of Assumed Contracts. The parties have agreed to defer any cure dispute to the November 18 omnibus hearing.
10.	2236	SFO Fuel Company, LLC	The Objecting Party seeks clarification as to which contracts with it the Debtors plan to assume and filed this Objection to preserve its rights.	Resolved	The Debtors have agreed to revise the Schedule of Assumed Contracts to clarify which Executory Contracts will be assumed.
11.	[none]	Alianza Fiduciara S.A. Fideicomiso d/b/a Hilton Garden Inn Barranquilla	The counterparty asserts that the total Cure Amount is $57,982.33.	Resolved	Counterparty has confirmed receipt of payment of all invoices except scheduled cure amount.
12.	[none]	Allied Universal	The counterparty asserts that there is a total Cure Amount of $1,847.22.	Adjourned	In accordance with Article VI.C of the Plan, this Contract objection has been adjourned with the consent of the counterparty to the hearing to be held on November 18, 2021.
13.	[none]	CAXDAC	CAXDAC requested clarifications to the descriptions of its contracts in the Schedule of Assumed Contracts	No objection filed / Resolved	The Debtors have agreed to revise the Schedule of Assumed Contracts to clarify the treatment of CAXDAC's contracts.
14.	[none]	DLA Piper Martínez Beltrán Abogados S.A.S.	The counterparty asserts that two agreements are listed with incorrect Debtor information and cure amounts.	Resolved	Debtors have agreed to amend the Cure Amount in the Schedule of Assumed Contracts.

No.	Dkt. No.	Counterparty	Summary of Objection	Status	Response
15.	[none]	GSA Express Travel Services Co. Ltd.	The counterparty asserts that the total Cure Amount is TWD241,399 and USD$2,190.36.	Adjourned	In accordance with Article VI.C of the Plan, this Contract objection has been adjourned with the consent of the counterparty to the hearing to be held on November 18, 2021.
16.	[none]	IBM Colombia	The counterparty has asked the Debtors for additional time to review the proposed cure amount for one of its contracts.	Adjourned	In accordance with Article VI.C of the Plan, this Contract objection has been adjourned with the consent of the counterparty to the hearing to be held on November 18, 2021.
17.	[none]	SAP Colombia S.A.S.	SAP believes that the Schedule of Assumed Contracts should be adjusted to reflect additional contracts between itself and the Debtors. SAP has also asserted that the cure amount should be greater than reported.	No objection filed / Partly resolved / Partly adjourned	The Debtors have resolved this comment by inclusion of language in the proposed Confirmation Order, which defers all issues raised by SAP to the November omnibus hearing.
18.	[none]	Total Airport Services	Objecting Party asserts there is a total Cure Amount of $14,000.00.	Adjourned	In accordance with Article VI.C of the Plan, this Contract objection has been adjourned with the consent of the counterparty to the hearing to be held on November 18, 2021.

Exhibit B to Memorandum

Proposed Confirmation Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
AVIANCA HOLDINGS S.A., *et al.*,[1]	:	Case No. 20-11133 (MG)
Debtors.	:	(Jointly Administered)

[PROPOSED] ORDER (I) CONFIRMING FURTHER MODIFIED JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS AND (II) GRANTING RELATED RELIEF

Upon the filing by Avianca Holdings S.A. and its above-captioned affiliates, as debtors and debtors in possession in these Chapter 11 Cases (collectively, the "**Debtors**") of the *Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors* [Docket No. 2259] (as amended or modified in accordance with its terms, the "**Plan**"),[2] which is attached hereto as **Exhibit A**; and the Court previously having entered the Disclosure Statement Order [Docket No. 2136] approving the adequacy of the Disclosure Statement and the solicitation

[1] The Debtors in these cases (the "**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 Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises 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); Nicaragüense de Aviación, Sociedad Anónima (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 used in this Confirmation Order but not otherwise defined shall have the meaning ascribed to them in the Plan.

procedures with respect to the acceptances and rejections of the Plan; and the Debtors having served the Solicitation Packages, including the Disclosure Statement, on the Holders of Claims and Interests pursuant to the Disclosure Statement Order as reflected in the *Certificate of Service* [Docket No. 2197]; and the Debtors having filed the documents comprising the Plan Supplement commencing on October 5, 2021 and continuing thereafter (*see* [Docket Nos. 2185, 2208]); and a hearing on confirmation of the Plan having been held on October 26, 2021 (the "**Confirmation Hearing**"); and the Court having considered (i) the record of the Chapter 11 Cases and of the Confirmation Hearing, (ii) the stakeholder support for the Plan evidenced in the *Certification of P. Joseph Morrow IV with Respect to the Tabulation of Votes on the Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors* [Docket No. 2239] (the "**Voting Certification**"), (iii) the briefs filed in connection with the confirmation proceedings and the arguments made and evidence presented at the Confirmation Hearing; and after due deliberation:

THE COURT HEREBY FINDS AND CONCLUDES:[3]

I. The Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Court has jurisdiction to enter a Final Order determining that the Plan complies with the applicable provisions of the Bankruptcy Code and other applicable law and should be approved and confirmed. Venue is proper before the Bankruptcy Court pursuant to 28 U.S.C. § 1408.

II. The Debtors are entities eligible for relief under section 109 of the Bankruptcy Code.

[3] The findings and conclusions set forth herein and in the record of the Confirmation Hearing constitute the Bankruptcy Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. If any of the following findings of fact constitute conclusions of law, they are adopted as such; if any of the following conclusions of law constitute findings of fact, they are adopted as such.

III. Votes on the Plan were solicited and tabulated fairly, reasonably, in good faith, and in compliance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any applicable non-bankruptcy rules, laws, and regulations. The Debtors, the Supporting Tranche B Lenders, the Committee, and their respective Related Parties participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer, issuance, sale, solicitation, and/or purchase of the securities offered under the Plan, and therefore are entitled to the protections of section 1125(e) of the Bankruptcy Code to the full extent provided therein.

IV. The Plan has been proposed in good faith and not by any means forbidden by law. In so finding, the Court has considered the totality of the circumstances of these Chapter 11 Cases. The Plan is the result of extensive, good faith, arm's-length negotiations among the Debtors and their principal constituencies.

V. The Tranche B Equity Conversion Agreement and the transactions contemplated thereby are an essential element of the Plan and are proposed in good faith. The terms and conditions of the Tranche B Equity Conversion Agreement and the transactions contemplated thereby (A) have been negotiated in good faith and at arm's length, without the intent to hinder, delay, or defraud any of the Debtors' creditors; (B) are fair and reasonable; (C) represent a valid exercise of the Debtors' business judgment; (D) are supported by reasonably equivalent value and fair consideration; and (E) are in the best interests of the Debtors, their Estates, and their stakeholders.

VI. The Avianca Plan Consolidation is appropriate and warranted under the circumstances.

VII. The Debtors, as proponents of the Plan, have met their burden of proving, by a preponderance of the evidence, that the Plan complies with all applicable provisions of section 1129 of the Bankruptcy Code.

VIII. The Plan properly classifies all Claims against and Interests in the Debtors, and properly specifies Impaired and Unimpaired Classes. The Plan has been accepted with respect to the Avianca Debtors by each Impaired Class entitled to vote to accept or reject the Plan. All Classes of Claims against each of the Unconsolidated Debtors are Unimpaired.

IX. The Plan does not "discriminate unfairly" and is "fair and equitable" with respect to all Classes that are Impaired and voted to, or are deemed to, reject the Plan, because, among other things, no Class senior to any rejecting Class is being paid more than in full and the Plan does not provide a recovery on account of any Claim or Interest that is junior to such rejecting Classes.

X. In accordance with section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, the provisions of the Plan (including the Global Plan Settlement) shall constitute an arms'-length and good-faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan, and all distributions made to holders of Allowed Claims and Interests in any Class in accordance with the Plan are intended to be, and shall be, final.

XI. The releases contained in Article IX of the Plan are an essential component of the Plan. The releases contained in Article IX of the Plan (i) are an essential means of implementing the Plan; (ii) are an integral and non-severable element of the Plan and the transactions incorporated herein; (iii) confer substantial benefits on the Debtors' Estates; (iv) are

in exchange for good and valuable consideration provided by the Released Parties; (v) are a good-faith settlement and compromise of the Claims and Causes of Action released by the Plan; (vi) are materially beneficial to and in the best interests of the Debtors, their Estates, and all holders of Claims and Interests; (vii) are fair, equitable, and reasonable; (viii) are given and made after due notice and opportunity for hearing; and (ix) are a bar to the Debtor and the Releasing Parties asserting any Claim or Causes of Action released pursuant by Article IX of the Plan. In addition, the third-party releases contained in Article IX.E of the Plan are consensual in that all Persons and Entities to be bound thereby were given due and adequate notice thereof and sufficient opportunity and adequate instructions to elect to opt out of such releases.

XII. The exculpation provided by Article IX.F of the Plan for the benefit of the Exculpated Parties is integral to the Plan, reasonable in scope, and appropriately tailored to the circumstances of these cases.

XIII. The injunction provided by Article IX.G of the Plan is essential to the Plan and is necessary to implement the Plan and to preserve and enforce the discharge, the releases by the Debtors, the releases by Holders of Claims and Interests, and the exculpation under the Plan. The injunction provisions are fair and reasonable and appropriately tailored to achieve those purposes.

XIV. The Debtors have exercised sound business judgment in determining whether to reject, assume, or assume and assign each of their Executory Contracts and Unexpired Leases pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code, in accordance with Article VI of the Plan and as set forth in the Plan Supplement. Except with respect to Executory Contracts and Unexpired Leases to be assumed or assumed and assigned pursuant to Article VI of the Plan and as set forth in the Plan Supplement (collectively, the "**Assumed Contracts**") that are the

subject of an Assumption Dispute, the Debtors have cured or demonstrated their ability to cure any default with respect to any act or omission that occurred prior to the Effective Date under the Assumed Contracts within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and the promise by the Reorganized Debtors to perform the obligations under the respective Assumed Contracts after the Effective Date shall constitute adequate assurance of their future performance of and under each of the respective Assumed Contracts within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code, as applicable.

XV. Pursuant to Bankruptcy Rule 3019, the amendments and/or modifications made to the *Joint Chapter 11 Plan of Avianca Holdings S.A. and its Affiliated Debtors* [Docket No. 2137] (the "**Solicited Plan**") made since the filing thereof do not require either (a) any additional disclosure under section 1125 of the Bankruptcy Code or (b) the re-solicitation of votes under section 1126 of the Bankruptcy Code because such amendments and/or modifications do not adversely change the treatment of any Claims or Interests.

XVI. The Exit Facility and the Exit Facility Documents are each an essential element of the Plan, are necessary for Confirmation and Consummation of the Plan, and are critical to the overall success and feasibility of the Plan. The execution, performance, incurrence of all obligations (including, without limitation, any fees and expenses due in connection with the Exit Facility Documents) to be paid by the Reorganized Debtors, and the creation and perfection of the Liens in connection therewith and the priority thereof, are necessary and appropriate for Confirmation of the Plan and the operations of the Reorganized Debtors. The Exit Facility and the Exit Facility Documents were negotiated and shall be deemed to be negotiated at arm's-length and in good faith, without the intent to hinder, delay, or defraud any creditor of the Debtors, and are supported by reasonably equivalent value and fair consideration. The Debtors have exercised

reasonable business judgment in determining to enter into the Exit Facility and the Exit Facility Documents and have provided sufficient and adequate notice of the material terms of the Exit Facility to all parties in interest in these Chapter 11 Cases. The execution, delivery, or performance by the Debtors or the Reorganized Debtors, as applicable, of any of the Exit Facility Documents and compliance by the Debtors or the Reorganized Debtors, as applicable, with the terms thereof is authorized by, and will not conflict with, the terms of the Plan or this Confirmation Order.

XVII. The offering, issuance, and distribution of the Exit A-1 Notes and the Exit A-2 Notes are subject to or are made in good faith and in reliance upon exemptions from the requirements of section 5 of the Securities Act and any state or local laws requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealing in, a security pursuant to section 4(a)(2) of the Securities Act, or any other available exemption from registration under the Securities Act, as applicable.

XVIII. The Debtors have elected to implement the Restructuring Transactions contemplated by the Plan in accordance with the Transaction Steps set forth in Exhibit A to the Plan Supplement, in accordance with the authority set forth in Article V.C of the Plan.

XIX. The issuance of the New Common Equity and the Warrants is an essential element of the Plan and is in the best interests of the Debtors, the Estates, and their stakeholders. The New Organizational Documents, the Shareholders Agreement, and the Warrant Agreement are essential elements of the Plan. The terms of the New Organizational Documents, the Shareholders Agreement, and the Warrant Agreement are fair and reasonable, and the Debtors have provided adequate notice of the material terms thereof.

XX. The New Common Equity and the Warrants issued under the Plan are in exchange for, or principally in exchange for, the Tranche B DIP Obligations or the General

Unsecured Avianca Claims. The New Common Equity, the Warrants, and any New Common Equity issuable upon exercise of the Warrants may and shall be issued without registration under the Securities Act or any similar federal, state, or local law in reliance upon section 1145 of the Bankruptcy Code.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

A. Confirmation of the Plan

1. The Plan is confirmed.

2. Any and all objections, statements, informal objections, and reservations of rights, if any, related to the Plan, Disclosure Statement, or Confirmation of the Plan that have not been withdrawn or resolved prior to the Confirmation Hearing are hereby overruled on the merits.

3. The amendments and/or modifications to the Solicited Plan made since the filing thereof are approved in accordance with section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019(a). Any votes timely and properly cast on the Solicited Plan shall constitute votes on the Plan.

4. The documents contained in the Plan Supplement are integral to the Plan and are approved by the Court, and the Debtors and the Reorganized Debtors (as applicable) are authorized to take all actions required to effectuate the Plan and the transactions contemplated therein, including, for the avoidance of doubt, the implementation of the Transaction Steps and the issuance and registration, as applicable, of any equity or debt security in connection with the Plan.

5. The Tranche B Equity Conversion Agreement, the terms thereof, and the transactions contemplated therein, including, without limitation, the Equity Conversion (as defined therein) and the Tranche B Equity Contribution, are integral to the Plan and are approved by the Court in all respects. The Debtors and the Reorganized Debtors (as applicable) are authorized to take all actions required to effectuate the Tranche B Equity Conversion Agreement and the

transactions contemplated therein. The failure to specifically include or refer to any particular article, section, or provision of the Tranche B Equity Conversion Agreement does not diminish or impair the effectiveness or enforceability of such article, section, or provision.

6. The terms of the Plan, the Plan Supplement, and the exhibits thereto are incorporated herein by reference and are an integral part of this Confirmation Order. Notwithstanding Bankruptcy Rules 3020(c), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, all exhibits thereto and all amendments thereto, and all other documents necessary for the implementation of the foregoing shall be immediately effective and enforceable and deemed binding on the Debtors, the Reorganized Debtors, the respective parties thereto, all present and former holders of Claims against the Debtors or Interests in the Debtors, and their respective heirs, executors, administrators, successors, and assigns. The failure to specifically include or refer to any particular article, section, or provision of the Plan, the Plan Supplement, or any related document in this Confirmation Order does not diminish or impair the effectiveness or enforceability of such article, section, or provision. Prior to the Effective Date, subject to any consent rights or conditions precedent set forth in the DIP Facility Documents or the Exit Facility Documents, including the consent rights of the Supporting Tranche B Lenders under the Plan and the Tranche B Equity Conversion Agreement, as applicable, and the consent rights of the DIP Agent under the DIP Facility Documents, as applicable, the Debtors may amend or modify the Plan in accordance with the Plan, including Article XI.A thereof, and section 1127(b) of the Bankruptcy Code. Prior to the Effective Date, subject to any consent rights or conditions precedent set forth in the Plan, DIP Facility Documents, or Exit Facility Documents, the Debtors shall have the right to finalize, amend, supplement, or modify the Plan Supplement, and any other documents necessary for the implementation thereof,

through the Effective Date (or as otherwise set forth in the Plan, including Article VI.A thereof) in accordance with the Plan, the DIP Facility Documents, the Bankruptcy Code, and the Bankruptcy Rules.

7. The terms of the New Organizational Documents, the Shareholders Agreement, and the Warrant Agreement (including any modifications or amendments made in accordance with paragraph 6 of this Order) are approved in all respects. The obligations of the applicable Reorganized Debtors related thereto will, upon execution, constitute legal, valid, binding, and authorized obligations of each of the applicable Reorganized Debtors, enforceable in accordance with their terms. On the Effective Date, without any further order of the Bankruptcy Court or action by any other party, each Reorganized Debtor, as applicable, shall be and is authorized to enter into the New Organizational Documents, the Shareholders Agreement, and the Warrant Agreement. In addition, on and, as applicable, after, the Effective Date, without any further order of the Bankruptcy Court or action by any other party, each Reorganized Debtor, as applicable, shall be and is authorized to (a) execute, deliver, file, and record any other contracts, assignments, certificates, instruments, agreements, or other documents to be executed and delivered in connection with the New Organizational Documents, the Shareholders Agreement, and the Warrants; (b) issue the New Common Equity, the Warrants, and any New Common Equity that may be issuable upon the exercise of the Warrants; (c) perform all of its obligations under the New Organizational Documents, the Shareholders Agreement, and the Warrant Agreement; (d) take all other actions as any of the officers of such Reorganized Debtor may deem necessary, appropriate, or desirable, in their business judgment, to effectuate the terms of the New Organizational Documents, the Shareholders Agreement, and the Warrant Agreement. Each Tranche B DIP Lender, Electing General Unsecured Claimholder, and any of their permitted

designees, successors, or assigns, shall be required to execute and deliver to the Reorganized Debtors a Deed of Adherence (as defined in the Shareholders Agreement) as a condition to receiving any distribution of New Common Equity under the Plan (including any New Common Equity issuable upon exercise of the Warrants). Notwithstanding anything to the contrary in this Confirmation Order or the Plan, any disputes arising under the New Organizational Documents, the Shareholders Agreement, or the Warrant Agreement will be governed by the jurisdictional provisions therein.

8. The Avianca Plan Consolidation, on the terms set forth in the Plan, is approved pursuant to section 105(a) of the Bankruptcy Code.

9. This Confirmation Order shall constitute, to the greatest extent permissible, all approvals and consents, if any, required by the laws, rules or regulations of any state or any governmental authority with respect to the implementation or consummation of the Plan and any act that may be necessary or appropriate for the implementation or consummation of the Plan.

10. Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized and directed to accept for filing and/or recording any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the transactions contemplated by the Plan and this Confirmation Order, including, without limitation, this Confirmation Order itself.

11. The compromises and settlements set forth in the Plan, including the Global Plan Settlement, are approved and shall be, effective as of the Effective Date, binding on all parties in interest in the Chapter 11 Cases.

12. Pursuant to Bankruptcy Rule 3020(c)(1), the following Plan provisions are expressly approved and shall be effective on the Effective Date without further order or action by the

Court or any other Entity: (i) Releases by the Debtors (Article IX.D); (ii) Releases by Holders of Claims or Interests (Article IX.E); (iii) Exculpation (Article IX.F); and (iv) Injunction (Article IX.G). All parties deemed to grant the releases contained in Article IX.E of the Plan are forever barred from asserting any Claim or Cause of Action against any of the Released Parties released thereby.

13. Notwithstanding anything herein, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Retained Causes of Action on the terms set forth in Article V.N of the Plan.

14. Except as otherwise provided in the Plan, the Exit Facility Documents, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan or the Exit Facility Documents (or with respect to the Liens granted in accordance with the DIP Facility (the "DIP Liens") in foreign jurisdictions where such DIP Liens will be assigned in favor of the holders of the Exit Facility Lenders rather than terminated), on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns. To the extent that any holder of a Secured Claim that has been satisfied or discharged pursuant to the Plan, or any agent for such holder, has filed or recorded any Liens to secure such holder's Secured Claim, then on or as soon as practicable after the Effective Date, such holder (or the agent for such holder) shall, at the Debtors' or Reorganized Debtors' sole cost and expense, take any and all steps reasonably requested by the Debtors, Reorganized Debtors, or the Exit Facility Indenture Trustee that are necessary to cancel

and/or extinguish such Liens, which shall be automatically canceled/or extinguished on the Effective Date pursuant to the entry of this Order; provided, that the foregoing shall not apply to the Secured RCF Liens.

15. In accordance with Article VII.C of the Plan, Michelle A. Dreyer, a Managing Director at CSC Global Financial Markets, is hereby appointed the General Unsecured Claims Observer as of the Effective Date and shall have standing to appear before the Bankruptcy Court with respect to matters arising out of or related to reconciliation, Allowance, and settlement of any General Unsecured Avianca Claims, as well as any objections thereto. For the avoidance of doubt, the Reorganized Debtors, in their business judgment and in consultation with the General Unsecured Claims Observer, may deem a claim "Allowed" following the Effective Date without further order of the Bankruptcy Court.

16. On the Effective Date, with respect to the Plan, the Committee shall be deemed to have been dissolved, and the members thereof, and their respective officers, employees, counsel, advisors and agents, shall be released and discharged of and from all further authority, duties, responsibilities, and obligations related to and arising from and in connection with the Chapter 11 Cases, except with respect to any continuing confidentiality obligations and for the limited purpose of, if applicable, prosecuting requests for allowances of compensation and reimbursement of expenses incurred prior to the Effective Date; and, in the event that the Bankruptcy Court's entry of the Confirmation Order is appealed, participating in such appeal. From and after the Effective Date, the Reorganized Debtors shall continue to pay, when due and payable in the ordinary course of business, the reasonable and documented fees and expenses of the Committee's professionals solely to the extent arising out of or related to the foregoing without further order of the Bankruptcy Court.

17. The Debtors shall cause a notice of the entry of this Confirmation Order and occurrence of the Effective Date, substantially in the form attached hereto as **Exhibit B** (the "**Confirmation Notice**"), to be served upon (i) all parties listed in the creditor matrix maintained by KCC LLC (as the claims, noticing, and solicitation agent in the Chapter 11 Cases), (ii) all parties that filed proofs of claim in the Chapter 11 Cases, and (iii) such additional Persons and Entities as deemed appropriate by the Reorganized Debtors, no later than five (5) business days after the Effective Date. The Reorganized Debtors shall use commercially reasonable efforts to publish the Confirmation Notice (or a notice substantially similar thereto) in *The New York Times* (National Edition), *USA Today*, *El Diario de Hoy*, *Diario de Comercio*, *Diario la República, El Tiempo*, and *La República* within ten (10) business days after the Effective Date, or as soon as practicable thereafter (allowing reasonable time for translation and other administrative and logistical issues). No other or further notice of the entry of this Confirmation Order and occurrence of the Effective Date shall be necessary.

B. Allowance of 2023 Notes Claims

18. On the date upon which the period of time fixed by the Plan (including pursuant to Article VII.F of the Plan), the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court to file an objection to the Allowance of a Claim has elapsed, 2023 Notes Claims shall be Allowed in an aggregate amount of $138,444,312.28, subject to adjustment with respect to any DWAC withdrawals that may occur on or after October 22, 2021.

C. Exit Facility

19. The Exit Facility is hereby approved and authorized in all respects. The Debtors or the Reorganized Debtors (and any agent on behalf of parties entitled to receive Exit A-1 Notes or Exit A-2 Notes), as applicable, are hereby authorized in all respects, without further approval of the Bankruptcy Court or any other party, to take all actions as necessary or desirable

to implement, consummate, and perform under the Exit Facility, including the payment or reimbursement of any fees, indemnities, and expenses under or pursuant to the Exit Facility Documents and to grant Liens to secure such indebtedness. In accordance with section 1142 of the Bankruptcy Code and applicable non-bankruptcy law, such actions may be taken without further action by stockholders, members, partners, managers, or directors.

20. The Exit Facility Documents are hereby authorized and approved. On the Effective Date, subject to the consent, approval rights, and conditions precedent of the applicable parties with respect to such documents as set forth in the Plan, the applicable Reorganized Debtors shall enter into the Exit Facility Documents to the extent they are party thereto, including any documents required in connection with the creation, perfection, or priority of Liens in connection therewith. Confirmation shall be deemed approval of the Exit Facility Documents (and the transactions contemplated thereby, all actions to be taken, undertakings to be made, and obligations to be incurred and fees paid by the Debtors or the Reorganized Debtors in connection therewith), and the Reorganized Debtors are authorized to execute and deliver those documents necessary or appropriate to consummate the applicable Exit Facility Documents without further notice to or order of the Court, act or action under applicable law, regulation, order, or rule or vote, consent, authorization, or approval of any Person, subject to such further negotiations, amendments, and modifications as may be agreed between the Debtors or the Reorganized Debtors and the applicable Exit Facility Lenders. For the avoidance of doubt, the Effective Date shall not occur unless the conditions precedent to the effectiveness of the Exit Facility shall have been satisfied or duly waived in writing in accordance with the terms of the DIP Facility Documents and the Exit Facility Documents, as applicable.

21. On the Effective Date, the Exit Facility Documents, including any documents required in connection with the creation or perfection of Liens in connection therewith, shall constitute legal, valid, binding, and authorized indebtedness and obligations of the applicable Reorganized Debtors, enforceable in accordance with their respective terms, and such indebtedness and obligations shall not be, and shall not be deemed to be, enjoined or subject to discharge, impairment, release or avoidance under the Plan, the Confirmation Order, or on account of the Confirmation or Consummation of the Plan.

22. Subject to the satisfaction or waiver of the conditions precedent set forth in the DIP Facility Documents and Exit Facility Documents, as applicable, the Reorganized Debtors are hereby authorized to convert/repay the Tranche A-1 DIP Obligations and Tranche A-2 DIP Obligations with the Exit Facility and use the proceeds of such borrowings for any purpose permitted thereunder. The Reorganized Debtors shall pay, as and when due, the Conversion Premium (as defined in the DIP Facility Documents) and all other fees, expenses, losses, damages, indemnities, and other amounts, including any applicable refinancing premiums and applicable exit fees, provided under the DIP Facility Documents related to the DIP Facility and/or the Exit Facility Documents relating to such Exit Facility.

23. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility (a) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (b) shall be deemed automatically attached and perfected on the Effective Date with the priority set forth in the Exit Facility Documents, and (c) shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy

Code or any applicable non-bankruptcy law and shall constitute legal, valid, and binding obligations of the Reorganized Debtors.

24. The obligations, guarantees, mortgages, pledges, Liens, and other security interests granted pursuant to or in connection with the Exit Facility (collectively, the "**Exit Facility Obligations and Security Interests**") are reasonable and granted in good faith, for good and valuable consideration, and for legitimate business purposes as an inducement to the Exit Facility lenders to extend credit and other financial accommodations thereunder. The Exit Facility Obligations and Security Interests shall not be enjoined or subject to discharge, impairment, release, avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever under applicable law, the Plan or this Confirmation Order, and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy law.

25. The Exit Facility Indenture Trustee and Exit Facility Lenders, as applicable, are authorized, but not required, to file, with the appropriate authorities, UCC financing statements, mortgages, and other documents and instruments and to take possession of and control over, or to take any other action in order to evidence, validate, and perfect such Liens and security interests to the extent provided in the Exit Facility Documents. Subject in all cases to the terms and provisions of the Exit Facility Documents, the Debtors and the Reorganized Debtors, as applicable, are authorized to execute and deliver to the Exit Facility Indenture Trustee and Exit Facility Lenders any such agreements, UCC financing statements, mortgages, instruments, and other documents, and to the extent provided in the Exit Facility Documents, obtain all governmental approvals and consents the Exit Facility Indenture Trustee and Exit Facility Lenders may reasonably request or that are required to establish and perfect such Liens and security interests

under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and this Confirmation Order, and, subject to the terms and provisions of the Exit Facility Documents, the Debtors and Reorganized Debtors, as applicable, are hereby authorized to make any and all filings and recordings necessary or desirable, or that the holders of the Exit Notes reasonably request, to perfect and/or give notice of such Liens and security interests to third parties.

D. Reimbursement of DIP Facility Fees and Expenses

26. To the extent not previously paid during the course of the Chapter 11 Cases, the DIP Facility Fees and Expenses incurred, or estimated to be incurred, up to and including the Effective Date, shall be paid in full in Cash on the Effective Date in accordance with, and subject to, the terms of the DIP Facility Documents, without any requirement to file a fee application with the Bankruptcy Court, without the need for itemized time detail, or without any requirement for Bankruptcy Court review or approval. All DIP Facility Fees and Expenses to be paid on the Effective Date shall be estimated prior to and as of the Effective Date, and such estimates shall be delivered to the Debtors at least five (5) Business Days before the anticipated Effective Date; provided, that such estimates shall not be considered an admission or limitation with respect to such DIP Facility Fees and Expenses. On or as soon as practicable after the Effective Date, final invoices for all DIP Facility Fees and Expenses incurred prior to and as of the Effective Date shall be submitted to the Debtors. In addition, the Debtors and the Reorganized Debtors (as applicable) shall continue to pay when due pre- and post-Effective Date any DIP Facility Fees and Expenses related to the DIP Facility in accordance with, and subject to, the terms of the DIP Orders and the DIP Facility Documents, whether incurred before, on, or after the Effective Date, without any requirement for Bankruptcy Court, U.S. Trustee, or Committee review or approval.

E. Cancellation of Loans and Securities

27. Except as otherwise provided in the Plan, the Tranche B Equity Conversion Agreement, the amended Secured RCF Documents, or the amended Engine Loan Documents, on the Effective Date or as soon as reasonably practicable thereafter with respect to each Debtor, the DIP Facility Claims, Grupo Aval Receivable Facility Claims, Grupo Aval Lines of Credit Claims, 2020 Notes Claims, 2023 Notes Claims, Direct Loan Claims, Other Existing Equity Interests, and any other certificate, equity security, share, note, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of, or ownership interest in, the Debtors giving rise to any Claim or Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligation of, or ownership interest in, the Debtors that are Reinstated or otherwise retained by holders thereof pursuant to the Plan), shall, to the fullest extent permitted by applicable law, be deemed cancelled, released, surrendered, extinguished, and discharged as to the Debtors without any need for further action or approval of the Bankruptcy Court or any holder thereof or any other Person or Entity, and the Reorganized Debtors shall not have any continuing obligations thereunder or in any way related thereto.

F. Executory Contract and Unexpired Leases

28. The rejections, assumptions, and assumptions and assignments, as applicable, of the Executory Contracts and Unexpired Leases set forth in the Plan are approved pursuant to sections 365(a) and 1123 of the Bankruptcy Code, effective as of the Effective Date and/or in accordance with the terms and conditions specified in the Plan Supplement in respect of the Executory Contracts and Unexpired Leases set forth in the Plan Supplement (including in respect of entry into New Aircraft Leases in connection with the rejection of certain pre-petition Aircraft Leases as set forth in the Plan Supplement).

29. The guarantee by Avianca Holdings S.A. of the obligations set forth in the *General Terms Agreement for the Supply of Seats for the CUSTOMER Aircraft Fleet (including Individual Agreement 1, which is attached as Exhibit 1 thereto)*, dated as of May 26, 2021, among certain of the Debtors and RECARO Aircraft Seating Americas, LLC, shall be deemed to be assumed by Reorganized AVH as of the Effective Date, and Reorganized AVH shall be bound by the terms of such guarantee.

30. SAP Colombia S.A.S. and its affiliates (collectively, "SAP") and certain of the Debtors are parties to various information technology agreements for software and software-related services, including, *inter alia*, cloud services, software support services, and consulting services (the "**SAP Contracts**"). Notwithstanding anything to the contrary in this Order, the Plan, or the Plan Supplement, the Debtors may amend the Schedule of Assumed Contracts at any time within thirty (30) days after the date of entry of this Order to reject, assume, or assume and assign any of the SAP Contracts. SAP's rights to object to the rejection, assumption, or assumption and assignment of the SAP Contracts are preserved, except with respect to timeliness under section 365(d)(2) of the Bankruptcy Code. SAP's rights to object to the assumption, assumption and assignment, and/or a proposed cure amount for any of the SAP Contracts are extended to the date that is 30 days after the date of entry of this Order or, with respect to an SAP Contract that is designated by the Debtors to be assumed or assumed and assigned after the date of entry of this Order, thirty (30) days after the date of such designation. SAP's rights to object to the rejection of any of the SAP Contracts or to file a Claim for rejection damages are extended to the date that is thirty (30) days after the date of entry of this Order or, with respect to an SAP Contract that is designated by the Debtors to be rejected after the date of entry of this Order, thirty (30) days after the date of such designation.

31. Notwithstanding anything to the contrary in the Plan or Confirmation Order, nothing shall modify the rights, if any, of Aero Miami II, LLC ("**Aero Miami**") to assert any right of setoff or recoupment that Aero Miami may have under applicable bankruptcy or non-bankruptcy law, including, but not limited to (i) the ability, if any, of Aero Miami to setoff or recoup a security deposit held pursuant to the terms of their unexpired lease with the Debtors or any successors to the Debtors, under the Plan; (ii) assertion of rights of setoff or recoupment, if any, in connection with Claims reconciliation; or (iii) assertion of setoff or recoupment, if any, as a defense against any claim, right, or cause of action of the Debtors.

32. The *General Terms Agreement DEG 5105* dated June 29th, 2007 (the "**GTA**") with Rolls-Royce Plc. and its affiliates (collectively, "**Rolls-Royce**") shall remain in full force and effect until the date of either (x) the Reorganized Debtors' and Rolls-Royce's entry into definitive documentation memorializing each ordinary course transaction as set forth in that certain *Engine Support and TotalCare Life Proposal* with Rolls-Royce or (y) the parties failure to reach agreement on such definitive documentation, which upon such date the GTA is deemed rejected.

33. As set forth in the [Settlement Agreement Order], the terms of the Settlement and Payoff Agreement and the transactions contemplated therein, are hereby ratified and affirmed and shall continue in full force and effect, are valid, effective, and non-avoidable post-petition obligations of the Debtors' Estates and the Reorganized Debtors. The Debtors or the Reorganized Debtors, as applicable, are hereby authorized in all respects, without further approval of the Bankruptcy Court or any other party, to take all actions as necessary or desirable to implement, consummate, and perform under the Settlement and Payoff Agreement.

34. As set forth in the [Sale-Leaseback Transactions Order], the terms of each Umbrella Agreement and the transactions contemplated therein, are hereby ratified and affirmed and shall continue in full force and effect, are valid, effective, and non-avoidable post-petition obligations of the Debtors' Estates and the Reorganized Debtors. The Debtors or the Reorganized Debtors, as applicable, are hereby authorized in all respects, without further approval of the Bankruptcy Court or any other party, to take all actions as necessary or desirable to implement, consummate, and perform under each Umbrella Agreement.

G. New Common Equity and Warrants

35. All of the New Common Equity to be issued or distributed pursuant to the Plan (including New Common Equity issuable upon exercise of the Warrants) shall be (a) duly authorized, validly issued, fully-paid, and non-assessable consistent with the terms of the New Organizational Documents and (b) not subject to avoidance or recharacterization for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transactions under the Bankruptcy Code or any applicable non-bankruptcy law.

36. All of the New Common Equity and all Warrants issued or distributed pursuant to the Plan (including New Common Equity issuable upon exercise of the Warrants), whether solely in exchange for Claims or, in the case of certain Tranche B DIP Lenders, in exchange for Tranche B DIP Facility Claims and the Tranche B Equity Contribution, shall be exempt from the registration requirements of Section 5 of the Securities Act and any "Blue Sky" Laws of any U.S. jurisdiction pursuant to section 1145(a) of the Bankruptcy Code, except to the extent that they are subject to the provisions of section 1145(b)(1). The New Common Equity and the Warrants issued or distributed pursuant to the Plan (i) will not be a "restricted security" as defined in Rule 144(a)(3) under the Securities Act and (ii) will, except as provided in the New Organizational Documents and the Shareholders Agreement, be freely transferable by any holder

thereof that is not (a) an "affiliate" of the Reorganized Debtors as defined in Rule 144(a)(1) under the Securities Act, (b) has not been such an "affiliate" within 90 days of such transfer, (c) has not acquired the New Common Equity or Warrants from an "affiliate" within one year of such transfer, and (d) is not an "underwriter" as defined in section 1145(b) of the Bankruptcy Code.

H. Certain Governmental Matters

1. Securities and Exchange Commission

37. Notwithstanding any language to the contrary contained in the Disclosure Statement, the Plan, and/or this Confirmation Order, no provision of the Plan or this Confirmation Order shall (i) preclude the United States Securities and Exchange Commission ("**SEC**") from enforcing its police or regulatory powers or (ii) enjoin, limit, impair or delay the SEC from commencing or continuing any claims, causes of action, proceedings, or investigations against any non-Debtor Person or non-Debtor Entity in any forum.

2. Texas Comptroller; Unclaimed Property Division

38. On or within one hundred and eighty (180) days after the Effective Date, the Debtors shall review their books and records and turn over to the Texas Comptroller any known Texas Unclaimed Property presumed abandoned before the Petition Date and reflected in property reports delivered by the Debtors to the Texas Comptroller under the Texas Unclaimed Property Laws (the "**Reported Unclaimed Property**"). With respect to such Reported Unclaimed Property, the Texas Comptroller will not seek payment of any interest or penalty by the Debtors or the Reorganized Debtors.

39. Notwithstanding section 362 of the Bankruptcy Code and any injunctions in the Plan or Plan Supplements, after the Effective Date, the Texas Comptroller and its agents may commence an audit of the Debtors in accordance with the Texas Unclaimed Property Laws (the "**Texas Unclaimed Property Audit**") and pursue recovery of any unremitted Texas

Unclaimed Property identified pursuant to the Texas Unclaimed Property Audit. The Debtors and the Reorganized Debtors shall fully cooperate with the auditors to enable them to accurately and timely perform the Texas Unclaimed Property Audit by making the entities' employees, professionals, books, and records available.

40. The Debtors' rights and defenses with respect to any allegations and claims asserted against the Debtors arising from or relating to the Texas Unclaimed Property Audit are hereby reserved; provided, however, that upon agreement between the Debtors or the Reorganized Debtors and the Texas Comptroller or a final non-appealable determination by a court or other tribunal with jurisdiction as to the amount of unremitted Texas Unclaimed Property, if any, that is due in connection with the Texas Unclaimed Property Audit, the Debtors or the Reorganized Debtors shall turn over such unremitted Texas Unclaimed Property to the Texas Comptroller.

41. The Texas Comptroller may file or amend any Proofs of Claim in these Chapter 11 Cases following the Effective Date as a result of the filing of any property reports or in the ordinary course of the Unclaimed Property Audit.

I. United Commercial Arrangement Matters

42. The Second United Omnibus Amendment is approved and ratified and shall vest in, and be binding on, the Reorganized Debtors pursuant to section 1141 of the Bankruptcy Code.

43. The Assumed United Agreements (as defined in the Second United Omnibus Amendment), as amended by section 1 of the Second United Omnibus Amendment, shall be assumed pursuant to sections 365 and 1123 of the Bankruptcy Code and vest in, and be binding on, the Reorganized Debtors pursuant to section 1141 of the Bankruptcy Code.

44. The JBA (as defined in the Second United Omnibus Amendment), as amended by section 2 of the Second United Omnibus Amendment, shall be assumed pursuant to

sections 365 and 1123 of the Bankruptcy Code and vest in, and be binding on, the Reorganized Debtors pursuant to section 1141 of the Bankruptcy Code.

45. The Interline Relationship Agreements (as defined in the United Omnibus Amendment) shall be assumed pursuant to sections 365 and 1123 of the Bankruptcy Code and vest in, and be binding on, the Reorganized Debtors pursuant to section 1141 of the Bankruptcy Code as provided in section 3(d) of the United Omnibus Amendment.

46. The Allowed Administrative Expense Claim (as defined in the Second United Omnibus Amendment) payable to United under the Second United Omnibus Amendment shall be paid in full in Cash on the Effective Date.

J. Grupo Aval Settlement and Grupo Aval Exit Facility

47. As set forth in Article V.O of the Plan and the Grupo Aval Settlement Order, the terms, conditions, obligations, covenants, security interests, and agreements set forth in the Grupo Aval Settlement Agreement, the Grupo Aval Definitive Documentation, and the Grupo Aval Exit Facility Agreement are hereby ratified and affirmed and shall continue in full force and effect (in each case as amended, restated, supplemented, or otherwise modified from time to time), are valid, effective, and non-avoidable post-petition obligations of the Debtors' Estates and the Reorganized Debtors. The Debtors and Reorganized Debtors are authorized to enter into and perform the Grupo Aval Definitive Documentation and Grupo Aval Exit Facility Agreement, including any amendments and modifications, that may be agreed in writing among the Debtors or Reorganized Debtors, on one hand, and the Grupo Aval Entities, on the other hand. The Grupo Aval Settlement Agreement, Grupo Aval Definitive Documentation, and Grupo Aval Exit Facility Agreement constitute legal, valid, binding, and non-avoidable post-petition obligations of the Debtors and their Estates and the Reorganized Debtors, enforceable against them in accordance with their terms as set forth more fully in in Article V.O of the Plan and in the Grupo Aval

Settlement Order. The receivables sold and transferred pursuant to the Grupo Aval Definitive Documentation shall include all Contract Rights and Air Travel Receivables and related ATR Collections (as such terms are defined in the Grupo Aval Definitive Documentation), whether or not any particular Airline Acquirer Contract (as defined in the Grupo Aval Definitive Documentation) is in place at the time the parties enter into the Grupo Aval Exit Facility Agreement. Any transfers of Contract Rights and Air Travel Receivables and related ATR Collections from non-Debtor entities to Debtor entities in connection with the implementation of the Grupo Aval Definitive Documentation and Grupo Aval Exit Facility Agreement shall not cause such assets to become property of the Debtors' Estates. Pursuant to the terms of the Grupo Aval Settlement Agreement, the Grupo Aval Definitive Documentation, and the Grupo Aval Exit Facility Agreement, the transfer of Contract Rights and Air Travel Receivables and related ATR Collections shall constitute an irrevocable "true sale" and a legal, valid, binding, and non-avoidable transfer and shall not be subject to recharacterization or avoidance. Upon such sale and transfer, such Contract Rights and Air Travel Receivables and related ATR Collections shall be property of the transferee of such Contract Rights and Air Travel Receivables and related ATR Collections in accordance with the Grupo Aval Definitive Documentation and the Grupo Aval Exit Facility Agreement and shall not constitute property of any Debtor, Reorganized Debtor, or their affiliates.

K. Certain Credit-Card Processing Matters

48. Notwithstanding Article IX.G of the Plan, Elavon Financial Services DAC (UK Branch), Elavon Canada Company, U.S. Bank National Association, acting through its Canadian Branch, and U.S. Bank National Association (collectively, and together with any affiliates, "**Elavon**") may exercise its normal recoupment, setoff, reserve, and processing procedures in respect of claims and the netting of fees, chargebacks, and other amounts in

accordance with the terms and conditions of agreements relating to credit card and debit transactions and processing between Elavon and certain of the Debtors assumed by the Reorganized Debtors (as amended, the "**Assumed Credit Card Processing Agreements**"). All obligations of the Debtors and all operations, rights, and remedies of Elavon, including the netting of prepetition and post-petition sales, refunds, fees, and chargebacks, arising under and pursuant to the Assumed Credit Card Processing Agreements shall remain fully enforceable against the Reorganized Debtors.

L. Certain Surety-Related Matters

1. Chubb Surety

49. Notwithstanding anything to the contrary in the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, the Exit Facility Documents, any bar date notice or Claim objection, or any agreements or documents relating to the foregoing, including, without limitation, any other order of the Bankruptcy Court (including, without limitation, any provision of the foregoing that purports to be preemptory or supervening, grants an injunction, discharge, or release, or requires a party to opt out of any releases) (collectively, for purposes of this section I of this Order, the "**Plan Documents**"), nothing in the Plan Documents shall in any way prime, discharge, impair, modify, or subordinate the rights of Chubb Seguros Colombia S.A and/or its past, present, or future affiliated sureties (each as surety in their role as an issuer of bonds, individually and collectively referred to herein as "**Chubb Surety**") including, without limitation, as to: (a) any indemnity or collateral obligations relating to bonds or related instruments issued and/or executed on behalf of or at the request of any of the Debtors and/or their non-Debtor affiliates that were or hereby are assumed as part of the Chapter 11 Cases (each such bond surety guaranties or surety-related products, a "**Bond**", and, collectively, the "**Bonds**"); (b) any funds Chubb Surety is holding and/or that are being held for Chubb Surety presently or in the future,

whether in trust, as security, or otherwise, including any proceeds due or to become due to any of the Debtors or their non-debtor affiliates in relation to contracts or obligations for which Chubb Surety has issued or may in the future issue any bond or related instrument, including any Bond; (c) any substitutions or replacements of said funds including accretions to and interest earned on said funds; (d) any collateral or letter of credit related to any indemnity, collateral trust, Bond, arrangement, contract or other agreements between or involving Chubb Surety and any of the Debtors and/or their non-debtor affiliates or predecessors that were or hereby are assumed as part of the Chapter 11 Cases; or (e) any rights, remedies and/or defenses Chubb Surety may now or in the future have with respect to any and all Bonds and/or related instruments issued and/or executed by Chubb Surety on behalf of any of the Debtors and/or their non-Debtor affiliates; (f) current or future setoff and/or recoupment rights and/or the lien rights and/or trust fund claims of Chubb Surety or any party to whose rights Chubb Surety has or may be subrogated, and/or any existing or future subrogation or other common law rights of Chubb Surety (notwithstanding the provisions set forth in Article IX.G of the Plan, including clause (IV) thereof); and (g) the Debtors' assumption of any indemnity agreement related to any of the Bonds (collectively, the "**Indemnity Agreements**"), which include, without limitation, those certain promissory notes in blank which provide that upon demand by Chubb Surety, the guarantor will unconditionally repay Chubb Surety for sums paid by Chubb Surety in connection with the applicable Bond(s) and concurrent with the promissory notes, certain letters of direction whereby Chubb Surety is irrevocably authorized to complete the promissory notes (i.e., fill in the blanks) for any disbursements or payments made by Chubb Surety under the applicable Bond(s), which Indemnity Agreements and the related Bonds are hereby assumed.

50. No third party releases in the Plan Documents shall apply to Chubb Surety and/or its Related Parties, or to claims to which Chubb Surety and/or its Related Parties are subrogated, and, to the extent necessary, Chubb Surety and/or its Related Parties shall be deemed to have opted-out of any such releases on behalf of itself/themselves and related to any party to whose rights Chubb Surety and/or its Related Parties has/have or may be subrogated. In addition, notwithstanding anything in the Plan Documents, the rights, claims, and defenses of the Debtors and of Chubb Surety and/or its Related Parties, including, but not limited to, Chubb Surety's and/or its Related Parties' rights under any properly perfected lien and/or claims and/or claim for equitable rights of subrogation, and rights of the Debtors and of any successors in interest to any of the Debtors and any creditors, to object to any such liens, claims, and/or equitable subrogation and other rights, are fully preserved, and Chubb Surety and/or its Related Parties shall not be required to file an administrative proof of claim, request for payment, or fee application to protect any such claims.

51. Nothing in the Plan Documents is an admission by Chubb Surety or the Debtors, or a determination by the Court, regarding any claims under any Bonds, and Chubb Surety and the Debtors (on behalf of themselves and their successors and creditors) reserve any and all rights, remedies, and defenses in connection therewith.

52. For the avoidance of doubt, Articles VII(D), VII(G), and VIII(I)(1) of the Plan shall not apply to Chubb Surety or any beneficiary of or obligee relating to the Bonds or the claims of Chubb Surety or said beneficiaries and/or obligees. Further, notwithstanding the provisions of Article V(N) of the Plan, the Debtors shall not assert Preference Actions as counterclaims or defenses to the claims of any beneficiary or obligee of the bonds issued by Chubb Surety, including the Bonds.

53. Nothing herein shall limit Chubb Surety from cancelling, terminating, not renewing, or refusing to increase the amount of any bonds, including the Bonds, in accordance with the terms applicable to such bonds and/or as otherwise permitted by law, and nothing herein shall require Chubb Surety to issue new bonds or similar instruments.

54. The Debtors shall reimburse Chubb Surety for any reasonable fees and costs incurred by Chubb Surety with regard to the Chapter 11 Cases through the Effective Date that have not been previously reimbursed.

55. Upon and in strict compliance with the request of Chubb Surety, one or more of the Reorganized Debtors and/or any new entity formed as part of the Restructuring Transactions in connection with the implementation of the Plan shall execute an indemnity agreement in a form that is acceptable to Chubb Surety, in which agreement shall be in favor of Chubb Surety.

56. Notwithstanding any provision in the Plan Documents, upon request, Chubb Surety shall have access to the specific portions of any and all books and records held by the Debtors and/or Reorganized Debtors relating to Chubb Surety's Bonds, and Chubb Surety shall receive no less than thirty (30) days' written notice by the entity holding such books and records prior to destruction or abandonment of any such books and records. Without limitation to any other rights of Chubb Surety, if a claim or claims are asserted against any Bond(s) and/or related instruments, then Chubb Surety shall be granted access to, and may make copies of, the specific portions of any books and records related to such Bonds upon Chubb Surety's request.

2. Crum Surety

57. Notwithstanding anything to the contrary in the Plan Documents, nothing in the Plan Documents shall in any way prime, discharge, impair, modify, or subordinate the rights of United States Fire Insurance Company and/or its past, present, or future affiliated sureties (each

as surety in their role as an issuer of bonds, individually and collectively referred to herein as "**Crum Surety**") including, without limitation, as to: (a) any indemnity or collateral obligations relating to bonds or related instruments issued and/or executed on behalf of or at the request of any of the Debtors and/or their non-Debtor affiliates that were or hereby are assumed as part of the Chapter 11 Cases (each such bond, surety guaranties or surety-related products, a "**Bond**", and, collectively, the "**Bonds**"); (b) any funds Crum Surety is holding and/or that are being held for Crum Surety presently or in the future, whether in trust, as security, or otherwise, including any proceeds due or to become due to any of the Debtors or their non-Debtor affiliates in relation to contracts or obligations for which Crum Surety has issued or may in the future issue any bond or related instrument, including any Bond; (c) any substitutions or replacements of said funds including accretions to and interest earned on said funds; (d) any collateral or letter of credit related to any indemnity, collateral trust, Bond, arrangement, contract or other agreements between or involving Crum Surety and any of the Debtors and/or their non-debtor affiliates or predecessors that were or hereby are assumed as part of the Chapter 11 Cases; or (e) any rights, remedies and/or defenses Crum Surety may now or in the future have with respect to any and all Bonds and/or related instruments issued and/or executed by Crum Surety on behalf of any of the Debtors and/or their non-Debtor affiliates; (f) current or future setoff and/or recoupment rights and/or the lien rights and/or trust fund claims of Crum Surety or any party to whose rights Crum Surety has or may be subrogated, and/or any existing or future subrogation or other common law rights of Crum Surety (notwithstanding the provisions set forth in Article IX.G of the Plan, including clause (IV) thereof); and (g) the Debtors' assumption of any indemnity agreement related to any of the Bonds (collectively, the "**Indemnity Agreements**"), which include, without limitation, the Indemnity

Agreement dated on or about December 13, 2016 in favor of Crum Surety as indemnitee, which Indemnity Agreements and the related Bonds are hereby assumed.

58. No third party releases in the Plan Documents shall apply to Crum Surety and/or its Related Parties, or to claims to which Crum Surety and/or its Related Parties are subrogated, and, to the extent necessary, Crum Surety and/or its Related Parties shall be deemed to have opted-out of any such releases on behalf of itself/themselves and related to any party to whose rights Crum Surety and/or its Related Parties has/have or may be subrogated. In addition, notwithstanding anything in the Plan Documents, the rights, claims, and defenses of the Debtors and of Crum Surety and/or its Related Parties, including, but not limited to, Crum Surety's and/or its Related Parties' rights under any properly perfected lien and claims and/or claim for equitable rights of subrogation, and rights of the Debtors and of any successors in interest to any of the Debtors and any creditors, to object to any such liens, claims, and/or equitable subrogation and other rights, are fully preserved, and Crum Surety and/or its Related Parties shall not be required to file an administrative proof of claim, request for payment, or fee application to protect any such claims.

59. Nothing in the Plan Documents is an admission by Crum Surety or the Debtors, or a determination by the Court, regarding any claims under any Bonds, and Crum Surety and the Debtors (on behalf of themselves and their successors and creditors) reserve any and all rights, remedies, and defenses in connection therewith.

60. For the avoidance of doubt, Articles VII(D), VII(G), and VIII(I)(1) of the Plan shall not apply to Crum Surety or any beneficiary or obligee relating to the Bonds or the claims of Crum Surety or said beneficiaries and/or obligees. Further, notwithstanding the provisions of Article V(N) of the Plan, the Debtors shall not assert Preference Actions as

counterclaims or defenses to the claims of any beneficiary or obligee of the bonds issued by Crum Surety, including the Bonds.

61. Nothing herein shall limit Crum Surety from cancelling, terminating, not renewing, or refusing to increase the amount of any bonds, including the Bonds, in accordance with the terms applicable to such bonds and/or as otherwise permitted by law, and nothing herein shall require Crum Surety to issue new bonds or similar instruments.

62. The Debtors shall reimburse Crum Surety for any reasonable fees and costs incurred by Crum Surety with regard to the Chapter 11 Cases through the Effective Date that have not been previously reimbursed.

63. Upon and in strict compliance with the request of Crum Surety, one or more of the Reorganized Debtors and/or any new entity formed as part of the Restructuring Transactions in connection with the implementation of the Plan shall execute an indemnity agreement in a form that is acceptable to Crum Surety, in which agreement shall be in favor of Crum Surety.

64. Notwithstanding any provision in the Plan Documents, upon request, Crum Surety shall have access to the specific portions of any and all books and records held by the Debtors and/or Reorganized Debtors relating to Crum Surety's Bonds, and Crum Surety shall receive no less than thirty (30) days' written notice by the entity holding such books and records prior to destruction or abandonment of any such books and records. Without limitation to any other rights of Crum Surety, if a claim or claims are asserted against any Bond(s) and/or related instruments, then Crum Surety shall be granted access to, and may make copies of, the specific portions of any books and records related to such Bonds upon Crum Surety's request.

M. Administrative Expense Bar Date

65. Except as otherwise provided in the DIP Orders, the Claims Bar Date Order, or the Plan, requests for payment of Administrative Expenses, other than claims for Professional

Fees, DIP Facility Claims, and DIP Facility Fees and Expenses, must be served on the Debtors or Reorganized Debtors (as applicable), KCC LLC, and the U.S. Trustee by the date that is ninety (90) days following the date of service of the Confirmation Notice. Each request for payment of an Administrative Expense must include, at a minimum, (i) the name of the applicable Debtor that is purported to be liable for the Administrative Expense and, if the Administrative Expense is asserted against more than one Debtor, the exact amount asserted to be owed by each such Debtor; (ii) the name of the Holder of the purported Administrative Expense; (iii) the asserted amount of the purported Administrative Expense; (iv) the basis of the purported Administrative Expense; and (v) supporting documentation. FAILURE TO TIMELY AND PROPERLY FILE AND SERVE A REQUEST FOR PAYMENT OF AN ADMINISTRATIVE EXPENSE SHALL RESULT IN SUCH ADMINISTRATIVE EXPENSE BEING FOREVER BARRED AND DISCHARGED. For the avoidance of doubt, this paragraph shall not apply to the fees and expenses of, or other amounts owed to, the Supporting Tranche B Lenders under the Tranche B Equity Conversion Agreement, which shall be paid in accordance with the terms thereof and, to the extent not already paid, shall survive unaffected by the deadline for filing Administrative Expenses set forth herein.

N. Exemption from Certain Taxes and Fees

66. To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, (i) the issuance, transfer, or exchange of any securities, instruments, or documents, (ii) the creation of any Lien, mortgage, deed of trust, or other security interest, (iii) any transfers of property (whether direct or indirect) pursuant to the Plan or the Plan Supplement, including, without limitation, the Restructuring Transactions, (iv) any assumption, assignment, or sale by the Debtors of their interests in Executory Contracts or Unexpired Leases pursuant to section 365 of the Bankruptcy Code, (v) the grant of collateral under the Exit Facility Documents, and (vi) the issuance, renewal, conversion, modification, or securing of indebtedness by such

means, and the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, the Plan Supplement, or this Confirmation Order, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, sale or use tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of this Confirmation Order, the appropriate governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property with the payment of any such tax, recordation fee, or governmental assessment.

O. Miscellaneous

67. The requirements of Bankruptcy Rule 3020(e) that an order confirming a plan is stayed until the expiration of fourteen (14) days after entry are hereby waived. The terms of this Confirmation Order shall be immediately effective and shall not be stayed pursuant to Bankruptcy Rules 3020(e), 6004(h), 6006(d), or 7062.

68. All Assumption Disputes arising from objections timely filed by the Confirmation Hearing in accordance with the Plan (or as otherwise agreed by the Debtors and the counterparty to the relevant Assumed Contract) are hereby adjourned to the omnibus hearing scheduled to be held before the Court on November 18, 2021 at 10:00 A.M. (prevailing Eastern Time), or as may be further adjourned pursuant to the Plan or as otherwise agreed by the Debtors and the counterparty to the relevant Assumed Contract.

69. Except as otherwise provided in the Plan or herein, notice of all pleadings filed in these cases after the Effective Date shall be limited to the following parties: (i) the Reorganized Debtors and their counsel, (ii) the U.S. Trustee, (iii) White & Case LLP, Dechert LLP, Sidley Austin LLP, Hughes Hubbard & Reed LLP, and Cadwalader, Wickersham & Taft

LLP, as counsel to the Supporting Tranche B DIP Lenders; (iv) any party known to be directly affected by the relief sought; and (v) and any Entity or Person that files a renewed request after the Effective Date to receive documents pursuant to Bankruptcy Rule 2002.

70. The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to effectiveness set forth in Article X of the Plan.

71. On the Effective Date, the Plan shall be deemed substantially consummated under sections 1101(2) and 1127(b) of the Bankruptcy Code.

72. This Confirmation Order is a Final Order, and the period within which an appeal must be filed commences upon the entry hereof.

Dated: _____, 2021
New York, New York

_____
THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit A to Confirmation Order

Plan

Exhibit B to Confirmation Order

Confirmation Notice

Dennis F. Dunne
Evan R. Fleck
Benjamin M. Schak
Kyle R. Satterfield
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

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

Counsel for Debtors and Debtors-In-Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
AVIANCA HOLDINGS S.A., *et al.*,[1]	:	Case No. 20-11133 (MG)
Debtors.	:	(Jointly Administered)

NOTICE OF EFFECTIVE DATE AND ENTRY OF ORDER (I) CONFIRMING FURTHER MODIFIED JOINT CHAPTER 11 PLAN OF AVIANCA HOLDINGS S.A. AND ITS AFFILIATED DEBTORS AND (II) GRANTING RELATED RELIEF

[1] The Debtors in these chapter 11 cases (the "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 Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises 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); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo 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.

PLEASE TAKE NOTICE that on September 15, 2021, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the solicitation version of their proposed *Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors* [Docket No. 2137] (together with the Plan Supplement and all schedules and exhibits thereto, and as amended, supplemented, or modified from time to time, the "Plan").[2]

PLEASE TAKE FURTHER NOTICE that a hearing to consider the confirmation of the Plan was held by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on October 26, 2021.

PLEASE TAKE FURTHER NOTICE that on [_____], 2021, the Bankruptcy Court entered the *Order (I) Confirming Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors and (II) Granting Related Relief* [Docket No. [__]] (the "Confirmation Order").

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Confirmation Order, the Debtors hereby provide notice of entry of the Confirmation Order.

PLEASE TAKE FURTHER NOTICE that all conditions precedent to the Effective Date set forth in Article X.A of the Plan have been satisfied or waived pursuant to Article X.B of the Plan, such that the Plan was substantially consummated, and the Effective Date occurred, on [_____], 2021.

PLEASE TAKE FURTHER NOTICE that, except as otherwise provided in the DIP Orders, the Claims Bar Date Order, or the Plan, requests for payment of Administrative Expenses, other than claims for Professional Fees, DIP Facility Claims, and DIP Facility Fees and Expenses, must be served on the Debtors or Reorganized Debtors (as applicable), KCC LLC, and the U.S.

[2] Capitalized terms used in this Notice but not otherwise defined shall have the same meaning as in the Plan.

Trustee by the date that **is ninety (90) days following the date of service of this Notice**. Each request for payment of an Administrative Expense must include, at a minimum, (i) the name of the applicable Debtor that is purported to be liable for the Administrative Expense and, if the Administrative Expense is asserted against more than one Debtor, the exact amount asserted to be owed by each such Debtor; (ii) the name of the Holder of the purported Administrative Expense; (iii) the asserted amount of the purported Administrative Expense; (iv) the basis of the purported Administrative Expense; and (v) supporting documentation. FAILURE TO TIMELY AND PROPERLY FILE AND SERVE A REQUEST FOR PAYMENT OF AN ADMINISTRATIVE EXPENSE SHALL RESULT IN SUCH ADMINISTRATIVE EXPENSE BEING FOREVER BARRED AND DISCHARGED. For the avoidance of doubt, this paragraph does not apply to the fees and expenses of, or other amounts owed to, the Supporting Tranche B Lenders under the Tranche B Equity Conversion Agreement, which will be paid in accordance with the terms thereof and, to the extent not already paid, will survive unaffected by the deadline for filing Administrative Expenses set forth herein.

PLEASE TAKE FURTHER NOTICE that, pursuant to Article VI of the Plan, unless otherwise provided by an order of the Bankruptcy Court that is entered after Confirmation, Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed with the Bankruptcy Court no later than thirty (30) days from the latest of (i) the date of entry of an order of the Bankruptcy Court approving such rejection, (ii) entry of the Confirmation Order, and (iii) the effective date of the rejection of such Executory Contract or Unexpired Lease. ANY CLAIMS ARISING FROM THE REJECTION OF AN EXECUTORY CONTRACT OR UNEXPIRED LEASE NOT FILED WITHIN SUCH TIME SHALL BE DISALLOWED, FOREVER BARRED FROM ASSERTION, AND SHALL NOT

BE ENFORCEABLE AGAINST THE DEBTORS OR THE REORGANIZED DEBTORS, OR PROPERTY THEREOF, WITHOUT THE NEED FOR ANY OBJECTION BY THE DEBTORS OR THE REORGANIZED DEBTORS OR FURTHER NOTICE TO, OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT OR ANY OTHER ENTITY.

PLEASE TAKE FURTHER NOTICE that, in order to continue to receive documents after the Effective Date pursuant to Bankruptcy Rule 2002, Persons and Entities (excluding the U.S. Trustee) must file renewed requests to receive documents pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that all filed versions of the Plan and other documents filed in the Chapter 11 Cases may be viewed for free at the website of the Debtors' claims and solicitation agent, at http://www.kccllc.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.

New York, New York
Dated: [_____], 2021

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Dennis F. Dunne
Evan R. Fleck
Benjamin M. Schak
Kyle R. Satterfield
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

- and –

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

Counsel for Debtors and
*Debtors in Possessio*n