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**Hearing Date & Time: TBD**

**Objection Deadline: TBD**

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

In re

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11133 (MG)  
(Jointly Administered)

**BURNHAM STERLING AND COMPANY LLC AND BABCOCK  
& BROWN SECURITIES LLC'S MOTION TO COMPEL  
COMPLIANCE WITH 11 U.S.C. §§ 365(d)(5) AND 503(b)**

Burnham Sterling and Company LLC (“**Burnham Sterling**”) and Babcock & Brown Securities LLC f/k/a Burnham Sterling Securities LLC (“**Babcock**”, and together with Burnham

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00- 1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47- 2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. 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.



Sterling, “**Burnham**”), creditors of Avianca Holdings S.A. and its debtor-affiliates (collectively, the “**Debtors**”) under those certain Lease Agreements (as defined below), by and through its undersigned counsel, hereby submits this motion (the “**Motion**”) pursuant to sections 365 and 503(b)(1) of title 11 of the United States Code, as amended (the “**Bankruptcy Code**”), for entry of an order substantially in the form annexed hereto as Exhibit A (the “**Proposed Order**”), compelling the immediate payment of the full amount of all accrued and accruing post-petition obligations under the Lease Agreements and awarding an administrative expense claim in the same amount. In support of the Motion, Burnham respectfully states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are sections 365(d)(5) and 503(b)(1) of the Bankruptcy Code, Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”).

### **RELIEF REQUESTED**

3. By this Motion, Burnham requests that the Court enter an order compelling the Debtors to immediately pay Burnham’s accrued and accruing post-petition claims pursuant to Bankruptcy Code sections 365(d)(5) and 503(b)(1) in accordance with the terms of the Lease Agreements, including interest on past due amounts calculated at the rate set forth in the Lease Agreements, and awarding an administrative expense claim in the same amounts.

## BACKGROUND

### A. Entry into the Lease Agreements

4. The Debtors began contracting with Burnham in 2014 to arrange the financing and leasing of certain aircraft in exchange for certain fees (such services, the “**Initiator Services**” and the related fees, the “**Initiator Fees**”). The Initiator Fees are due and owing under the terms of various lease agreements and ancillary documents related to the following transactions (collectively, the “**Lease Agreements**”):

- EAIV 2015 (Group 1): MSNs 6617, 6692, 6739, 37507;
- EAIV 2015 (Group 2): MSNs 6767, 6511, 37508, 6746;
- EAIV 2016: MSNs 37511, 7284, 7318;
- JOLCO (2017): MSNs 7887, 7928;
- JOLCO (2018): MSNs 65315, 8300;
- JOLCO (2019): MSNs 3988, 3992, 4281, 4284; and
- JOLCO (2017): MSNs 39407

5. Under the Lease Agreements, the Debtors have an unconditional obligation to pay Burnham through the payment of “Additional Rental Payments” on a schedule set forth in the Lease Agreements. By way of example, the Amended and Restated Aircraft Lease Agreement (MSN 3992), dated April 25, 2019, between Aircol 7, as Lessor, and Aerovías Del Continente Americano S.A., as Lessee (the “**MSN 3992 Lease Agreement**”), includes the following provision for the payment of the Initiator Fees (which is referred to in this agreement as the “Initiator Compensation”):

The Lessee shall on each Additional Rental Payment Date pay to the Lessor at the Initiator Account, by way of additional rental payment, installments of the Initiator Compensation . . . . The Sub-Lessee acknowledges that the Initiator has already provided

services prior to the Delivery Date, and accordingly agrees that the Sub-Lessee's obligations to pay the Initiator Fees hereunder are unconditional.

*See* MSN 3992 Lease Agreement § 5.2.

6. Burnham is also expressly authorized to enforce its right to payment under the Lease Agreements against the Debtors:

The agreement as to the payment of the Initiator Compensation under this Lease is a bilateral matter as between the Lessee and the Initiator, and no consent or act is required by the Lessor for the Initiator to enforce its rights hereunder, or for the Lessee and the Initiator to agree to any amendment or variation of any payment of Initiator Compensation.

*See* MSN 3992 Lease Agreement § 5.2(f).

7. Burnham is also designated as an express third-party beneficiary under the Lease Agreements, entitled to enforce its rights under such agreements:

The Initiator shall be entitled to enforce its rights against the Lessee and Lessor under and in connection with this Clause 5.2 as a third party, notwithstanding that the Initiator is not a signatory to this Agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt, the Initiator shall have the right to bring a claim directly against the Lessee and/or the Guarantor for any Initiator Compensation and any other amounts payable to the Initiator that become due and unpaid under this Agreement, and such right shall not be reduced, diminished or otherwise affected in any respect detrimental to the Initiator as a result of Initiator not being a party to this Agreement. Any obligation in connection with Initiator's deficiency claim against the Lessee (or Guarantor) shall only be released upon actual receipt by Initiator of the relevant amounts. Any amounts payable by the Lessee to the Initiator in respect of such deficiency claim shall be paid by Lessee (or Guarantor) directly to the Initiator.

*See, e.g.*, MSN 3992 Lease Agreement § 5.2(j).

8. Accordingly, the Lease Agreements indisputably provide Burnham with a right to payment of the Initiator Fees as Additional Rental Payments, along with the right to enforce such Lease Agreements.

## **B. Chapter 11 Cases**

9. On May 10, 2020 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the

Southern District of New York (the “**Bankruptcy Court**”). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108. The chapter 11 cases were consolidated for procedural purposes only and are being jointly administered.

10. On November 16, 2020, the Bankruptcy Court entered an order establishing January 20, 2021 as the bar date for filing proofs of claims in the chapter 11 cases for general creditors (the “**Bar Date**”). *See Order (I) Establishing Bar Dates for Filing Proofs of Claim, (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures, (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims, and (IV) Providing Certain Supplemental Relief* [Docket No. 1180]. On the Bar Date, Burnham timely filed proof of claim numbers 2055 and 2057 (the “**Prepetition Claims**”), asserting Burnham’s prepetition claims against the Debtors.<sup>2</sup>

11. Since the filing of the chapter 11 cases, the Bankruptcy Court has entered several orders relating to the rejection of certain of the Lease Agreements (collectively, the “**Rejection Orders**”), including the following:

- *Order Authorizing the Debtors to (I) Enter into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company (MSN 7928) and Certain Related Agreements* [Docket No. 1929];
- *Order Authorizing the Debtors to (I) Enter into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company (MSN 7887) and Certain Related Agreements* [Docket No. 1930];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and (II) Reject Pre-Petition Aircraft Lease (MSN 8300) and Certain Related Agreements* [Docket No. 2002];

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<sup>2</sup> On November 8, 2021, Burnham made its written election to receive the Unsecured Claimholder Equity Package and Warrants with respect to claims 2055 and 2057 pursuant to Article III.B(11) of the Plan (as defined below).

- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2016 (MSNs 7284 and 7318) and Certain Related Agreements* [Docket No. 2004];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2015 (MSNs 6511, 6617, 6692, 6739, 6746, and 6767)* [Docket No. 2015];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 4281 and 4284) and Certain Related Agreements* [Docket No. 2016]; and
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 3988 and 3992) and Certain Related Agreements* [Docket No. 2017].

12. Pursuant to the Rejection Orders, Burnham has thirty days from the date of each Rejection Order to file a new claim or amend a previously filed claim against any of the Debtors, for “damages based upon or resulting from the assumption, rejection or amendment of any unexpired leases or subleases related to each of the transactions.”<sup>3</sup> Burnham complied with such deadline and, on August 23, 2021, timely filed proof of claim numbers 4033, 4034, 4035, 4036, 4037 and 4038 (collectively, the “**Administrative Claims**”). A copy of such Administrative Claims are attached as **Exhibit B**.

13. The Rejection Orders provide that the rejection of the leases will become effective upon the Debtors’ entry into a new aircraft lease for such aircraft (the “**Rejection Date**”).<sup>4</sup> Under the Rejection Orders, the Debtors are required to file notice of the Rejection Date with the Court promptly upon entry into a new aircraft lease.

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<sup>3</sup> Burnham does not believe that the thirty-day deadline imposed by the Rejection Orders applies to the filing of administrative expense claims, which do not arise from the rejection of the applicable agreements.

<sup>4</sup> To the extent applicable, Burnham objects to the effectiveness of any rejection as described in Schedule E of the Plan Supplement.

14. Based on the notices of the Rejection Dates filed with the Court [Docket Nos. 2427, 2500, 2501, 2502, 2503, 2582], and the terms of the applicable leases, the following Initiator Fees accrued post-petition through the applicable Rejection Dates.

MSN	Transaction	Lease Rejection or Maturity Date	Total Due to Burnham Sterling	Total Due to Babcock
6617	2015 EAIV-1	7/18/2022	45,687.49	51,701.85
6692	2015 EAIV-1	5/24/2022	51,409.79	58,255.50
6739	2015 EAIV-1	6/6/2022	52,152.84	59,061.05
37507	2015 EAIV-1	5/11/2022	133,928.25	151,556.87
6767	2015 EAIV-2	12/15/2022	75,331.56	85,249.41
6511	2015 EAIV-2	12/15/2022	75,266.24	85,127.75
37508	2015 EAIV-2	5/25/2022	136,495.09	154,564.77
6746	2015 EAIV-2	6/1/2022	51,799.77	58,644.47
37511	2016 EAIV	8/31/2022	343,358.78	-
7284	2016 EAIV	2/9/2022	93,517.20	-
7318	2016 EAIV	2/16/2022	94,490.27	-
7887	2017 JOLCO	5/12/2022	298,496.43	-
7928	2017 JOLCO	5/9/2022	297,538.76	-
65315	2018 JOLCO	12/1/2021	315,738.05	-
8300	2018 JOLCO	1/27/2022	195,046.54	-
3988	2019 JOLCO	2/4/2022	120,098.42	-
3992	2019 JOLCO	2/26/2022	124,194.22	-
4281	2019 JOLCO	2/9/2022	131,935.38	-
4284	2019 JOLCO	1/27/2022	129,426.38	-
<b>Total</b>			<b>\$2,765,911.46</b>	<b>\$704,161.68</b>

15. The Rejection Date with respect to the lease for MSN 39407 has not occurred and thus Burnham’s post-petition administrative claim under that lease continues to accrue. As of December 1, 2022, that claim totals \$739,700.13 (including interest).

16. As of the date hereof, Burnham has not received payment on account of any of its Administrative Claims.

**LEGAL BASIS FOR RELIEF REQUESTED**

**A. Allowance and Payment of Burnham’s Initiator Fees is Required by Bankruptcy Code Section 365(d)(5)**

17. Under Bankruptcy Code section 365(d)(5), the Debtors are obligated to “timely perform *all of the obligations*” on leases of personal property after sixty days after the Petition Date until the leases are assumed or rejected. *See* 11 U.S.C. § 365(d)(5). Specifically, Bankruptcy Code section 365(d)(5) states as follows:

The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee’s obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor’s rights under such lease or under this title.

11 U.S.C. § 365(d)(5).

18. A debtor’s obligations under section 365(d)(5) are independent of, and not subject to, the requirements for the allowance of administrative expenses under Bankruptcy Code section 503. *See* 3 Collier on Bankruptcy P 365.04 (16<sup>th</sup> ed. 2022) (Section 365(d)(5) “is apparently intended to eliminate an argument over whether accrued rent was ‘actual’ or ‘necessary’ and, hence, entitled to an administrative priority.”); *In re Hayes Lemmerz Int’l, Inc.*, 340 B.R. 461, 472 (D. Del. 2006) (“Unlike parties claiming administrative expense status under section 503(b), [creditors] claiming under section [365(d)(5)] need not prove they conferred any benefit upon the estate.”).

19. Accordingly, Burnham need not establish a benefit to the Debtors’ estates in order to be awarded an administrative expense claim under section 365(d)(5); rather, Burnham must only



establish that the charges came due during the section 365(d)(5) period. *See In re Stone Barn Manhattan LLC*, 405 B.R. 68, 76 (Bankr. S.D.N.Y. 2009) (“To allow the debtor to extend this abeyance period on commercial personal property lease obligations . . . would be to allow the debtor to circumvent the 60-day limitation . . .”)<sup>5</sup>; *see also In re Midway Airlines Corp.*, 406 F.3d 229, 237 (4th Cir. 2005) (“when a lessor seeks an administrative expense for ‘all of the obligations’ due under a lease, the ‘notwithstanding § 503(b)(1)’ proviso . . . relieves the lessor from proceeding under § 503(b)(1)(A), which would limit the recovery to an amount representing only the actual and necessary use by the estate”); *In re Wyoming Sand and Stone Co.*, 393 B.R. 359, 361 (M.D. Pa. 2008) (“Benefit to the estate is not an issue under § 365(d)(5), and, in the absence of intervening action by the Debtor, the obligation to perform under the lease remains.”); *In re Russel Cave Co.*, 247 B.R. 656, 658 (Bankr. E.D. Ky. 2000) (holding that the purpose of section 365(d)(10), 365(d)(5)’s predecessor, “is to mandate the performance of the debtor’s obligations under an unexpired lease, beginning on the 60th day after filing”); *In re Lakeshore Const. Co. of Wolfboro, Inc.*, 390 B.R. 751, 756 (Bankr. D.N.H. 2008) (“personal property lessors may assert administrative claims under § 365(d)(5) based upon the terms of the lease and not the benefit to the bankruptcy estate.”).

20. Here, the Debtors continued to operate under the Lease Agreements 60 days after the Petition Date through the applicable Rejection Dates. Burnham’s claim for Initiator Fees under the terms of the Lease Agreements—the payment of which is classified as “Additional Rental Payments”—indisputably falls within the “all obligations” under a personal property lease that is entitled to an administrative expense claim under Bankruptcy Code Section 365(d)(5). *In re*

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<sup>5</sup> As part of the 2005 BAPCPA amendments to the Bankruptcy Code, 11 U.S.C. § 365(d)(10) was moved to subsection (d)(5). However, the language of the provision was not altered, so courts have agreed that case law interpreting old 11 U.S.C. § 365(d)(10) “is equally authoritative under § 365(d)(5).” *In re Stone Barn Manhattan LLC*, 405 B.R. 68, 76 n.8 (Bankr. S.D.N.Y. 2009).

*Wyoming Sand and Stone Co.*, 393 B.R. at 361 (concluding that no showing of a benefit to the estate is required and “the Court has little discretion but to award [the applicable creditor] an allowance for that time period from the 60th day after filing until surrender of the equipment . . .”); *Lakeshore Const. Co.*, 390 B.R. at 756 (Section 365(d)(5) imposes a “duty of timely performance on trustees and debtors-in-possession” and “eliminates the ‘actual and necessary’ test under § 503(b)(1).”).

21. Since the Debtors are required to perform “all obligations” under section 365(d)(5), Burnham is also entitled to post-petition default interest due and owing under the terms of the Lease Agreements. Indeed, courts have concluded that the administrative expense treatment afforded by Bankruptcy Code section 365(d)(5) extends to interest payments, attorney’s fees, and other similar charges to the extent provided for under the terms of the lease agreement. *See, e.g., In re Crown Books Corp.*, 269 B.R. 12, 18 (Bankr. D. Del 2001) (holding landlord entitled to collect attorney’s fees provided under prepetition agreement in enforcing administrative claim against debtors); *In re Pettingill Enterprises, Inc.*, 486 B.R. 524, 537 (Bankr. D.N.M. 2013) (creditor entitled to recover hauling charges under § 365(d)(5) as the debtor was “obligated to pay such costs under the terms of the Rental Contracts and because they accrued more than 60 days after the Petition Date and prior to the rejection of the Rental Contracts”).

22. Accordingly, for the foregoing reasons, this Court should enforce Bankruptcy Code section 365(d)(5) as written and compel the Debtors to immediately pay Burnham its section 365(d)(5) claim, plus interest.<sup>6</sup>

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<sup>6</sup> Courts have also found that a creditor’s section 365(d)(5) claim is entitled to be paid before other administrative claims. *See, e.g., In re Brennick*, 178 B.R. 305, 306-08 (Bankr. D. Mass. 1995) (Chapter 7 trustee was required to pay landlord’s claim immediately, and landlord was not obligated to reimburse trustee if there were insufficient funds to pay other Chapter 11 or Chapter 7 administrative expense claimants); *In re Telesphere Commc’ns, Inc.*, 148 B.R. 525, 528-30 (Bankr. N.D. Ill. 1992) (claims under Section 365(d)(5) are entitled to immediate payment on superpriority basis).

**B. Burnham is Entitled to an Administrative Claim Under Bankruptcy Code Section 503(b)(1)**

23. Bankruptcy Code section 503(b)(1) provides that the actual, necessary costs and expenses of preserving the Debtor's estate constitute administrative expenses, and that a party may file a request for payment of administrative expenses. 11 U.S.C. § 503(b)(1); *see In re Patient Education Media, Inc.*, 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998); *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 531 (1984) (“If the debtor-in-possession elects to continue to receive benefits from the executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services . . .”). The Second Circuit has recognized the presumption that the payment terms of a lease are a reasonable measure of the administrative expenses to be paid by a debtor. *Farber v. Wards Co., Inc.*, 825 F.2d 684, 689-90 (2d Cir. 1987); *see also In re ID Liquidation One, LLC*, 503 B.R. 392, 399 (Bankr. D. Del 2013) (“[T]here is a presumption that the contract terms and rate represent the reasonable value of the services or goods provided under the contract.”).

24. Through the applicable Rejection Dates, the Debtors continued to receive the benefit of the Lease Agreements and the amounts due under such agreements—including the Initiator Fees—constitute the actual and necessary costs of preserving the estates. Accordingly, Burnham is entitled to an allowed administrative expense claim for all amounts due under the Lease Agreements from the Petition Date through the Rejection Date.

**RESERVATION OF RIGHTS**

25. Burnham expressly reserves its rights to amend or supplement this Motion from time to time and at any time, and requests that the Debtors remain liable for, among other things, certain amounts accruing under the Lease Agreements, which may be unbilled as of the date hereof. Nothing in this Motion is intended to be, or should be construed as, a waiver by Burnham

of any of its rights under the Lease Agreements, the Bankruptcy Code, or applicable law. Burnham expressly reserves all such rights.

**NO PRIOR REQUEST**

26. No prior request for the relief sought herein has been requested by Burnham.

**CONCLUSION**

27. Based on the foregoing, Burnham respectfully requests the entry of an order substantially in the form attached hereto as **Exhibit A** compelling the immediate payment of the full amount of all accrued and accruing post-petition obligations under the Lease Agreements and awarding an administrative expense claim in the same amount.

WHEREFORE, Burnham respectfully requests that the Court enter the Proposed Order or grant such other or further relief as the court deems just and proper.

Dated: November 30, 2022  
New York, New York

Respectfully Submitted,

**O'MELVENY & MYERS LLP**

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**EXHIBIT A**

**Proposed Order**

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

In re

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11133 (MG)  
(Jointly Administered)

**ORDER GRANTING BURNHAM STERLING AND COMPANY LLC  
AND BABCOCK & BROWN SECURITIES LLC'S MOTION TO  
COMPEL COMPLIANCE WITH 11 U.S.C. §§ 365(d)(5) AND 503(b)**

Upon consideration of the Motion<sup>2</sup> of Burnham Sterling and Company LLC and Babcock & Brown Securities LLC f/k/a Burnham Sterling Securities LLC (collectively, “**Burnham**”) for entry of an order (the “**Order**”) compelling the immediate payment of the full amount of all accrued and accruing post-petition obligations under the Lease Agreements and awarding an administrative expense claim in the same amount; and the Court having jurisdiction over this matter under 28 U.S.C. § 1334 and this being a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M), and (O); and the Court having found that venue of this proceeding and the Motion in this

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00- 1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47- 2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefore, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** in its entirety.
2. The Debtors shall immediately pay all post-petition amounts due to Burnham under the Lease Agreements, by payment of not less than \$4,209,773.27, plus other amounts that came due under the terms of the Lease Agreements until the Rejection Date.
3. The foregoing amounts shall constitute allowed administrative claims in favor of Burnham until such time as they have been paid and satisfied.
4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: [\_\_\_\_\_], 2022  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE



**Exhibit B**

**Administrative Claims**

<b>UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</b>	<b>PROOF OF ADMINISTRATIVE CLAIM</b>																																													
THIS FORM SHOULD NOT BE USED FOR CLAIMS EXCLUDED BY SAID NOTICE NOR SHOULD IT BE USED FOR ANY CLAIMS THAT ARE NOT OF A KIND AND ENTITLED TO PRIORITY IN ACCORDANCE WITH 11 U.S.C. §§ 503(b) AND 507(a)(2), IT SHOULD NOT BE USED BY ANY PERSON ASSERTING CLAIMS PURSUANT TO SECTION 503(B)(9) OF THE BANKRUPTCY CODE.																																														
Fill in this information to identify the case (Select only one Debtor per claim form):																																														
<table border="1" style="width:100%; border-collapse: collapse; font-size: x-small;"> <tr> <td><input type="checkbox"/> Aero Transporte de Carga Unión, S.A. de C.V. (Case No. 20-11140)</td> <td><input type="checkbox"/> Aeroinversiones de Honduras, S.A. (Case No. 20-11141)</td> <td><input type="checkbox"/> Aerovías del Continente Americano S.A. Avianca (Case No. 20-11134)</td> <td><input type="checkbox"/> Airlease Holdings One Ltd. (Case No. 20-11142)</td> <td><input type="checkbox"/> America Central (Canada) Corp. (Case No. 20-11143)</td> </tr> <tr> <td><input type="checkbox"/> America Central Corp. (Case No. 20-11144)</td> <td><input type="checkbox"/> AV International Holdco S.A. (Case No. 20-11145)</td> <td><input type="checkbox"/> AV International Holdings S.A. (Case No. 20-11146)</td> <td><input type="checkbox"/> AV International Investments S.A. (Case No. 20-11147)</td> <td><input type="checkbox"/> AV International Ventures S.A. 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Name of Creditor (The person or entity to whom the debtor owes money or property)  Burnham Sterling and Company LLC	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your administrative expense claim. Attach copy of statement giving particulars.																																													
Name and Addresses Where Notices Should be Sent:  Burnham Sterling and Company LLC 29 River Road Suite 102 Cos Cob, CT 06807	Name and Addresses Where Payment Should be Sent (if different):																																													
1. BASIS FOR CLAIM: <input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Personal Injury/Wrongful Death <input type="checkbox"/> Wages (Dates): _____ <input type="checkbox"/> Money loaned <input type="checkbox"/> Taxes <input type="checkbox"/> Retiree Benefits as Defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Other (Specify): _____																																														
2. DESCRIPTION OF CLAIM (IF KNOWN):      See Addendum																																														
3. TOTAL AMOUNT OF CLAIM:      \$ See Addendum (Total)																																														

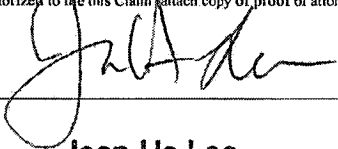
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AUG 23 2021

KURTZMAN CARSON CONSULTANTS



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<p>4. <b>CREDITS AND SETOFFS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p> <p>5. <b>SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. Do not send original documents. If the documents are not available, explain. If the documents are voluminous, attach a summary. The Debtors may request full copies of your supporting documentation to substantiate the claim.</p> <p>6. <b>TIME-STAMPED COPY:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>	<p>THIS SPACE IS FOR COURT USE ONLY</p>
<p>Date: August 23, 2021</p>	<p>Sign and print the name and title. If any, of the creditor or other person authorized to file this Claim (attach copy of proof of attorney, if any)</p> 

Joon-Ho Lee  
Authorized Signatory

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AUG 23 2021

KURTZMAN CARSON CONSULTANTS

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11133 (MG)  
(Jointly Administered)

ADDENDUM TO PROOF OF CLAIM OF  
BURNHAM STERLING AND COMPANY LLC

Burnham Sterling and Company LLC (“**Burnham**”), an unregistered entity providing financial advisory services, asserts the following claims (the “**Claims**”) against Avianca Holdings S.A. and its debtor-affiliates (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), and respectfully states as follows:

**I. Background**

1. Commencement of the Chapter 11 Cases. On May 10, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); AeroInversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00- 1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47- 2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. 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.

Code, as amended (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

2. Debtors-in-Possession. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108.

3. Joint Administration. The Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered under case number 20-11133 (MG).

4. Bar Date. On October 29, 2020, the Debtors filed the *Notice of Debtors’ Application for an Order (I) Establishing Bar Dates for Filing Proofs of Claim; (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures; (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims; (IV) Providing Certain Supplemental Relief* [Docket No. 1138] (the “**Bar Date Motion**”). On November 16, 2020, the Bankruptcy Court granted the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures, (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims, and (IV) Providing Certain Supplemental Relief* [Docket No. 1180] approving the relief sought in the Bar Date Motion and establishing January 20, 2021 at 11:59 p.m. (PT) as the bar date for filing proofs of claims in the Chapter 11 Cases for general creditors (the “**Bar Date**”). On January 20, 2021, Burnham timely filed proof of claim number 2055 by the Bar Date (the “**Prepetition Claims**”). The filing of these Claims is not intended to, and does not, amend the Prepetition Claims filed by Burnham.

5. Rejection Orders. To date, the Bankruptcy Court has entered six orders that impact Burnham (each, a “**Rejection Order**” and collectively, the “**Rejection Orders**”), which include:

- *Order Authorizing the Debtors to (I) Enter into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company*

*(MSN 7928) and Certain Related Agreements* [Docket No. 1929], as subsequently modified by the *Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and (II) Reject Pre-Petition Aircraft Lease (MSN 8300) and Certain Related Agreements*, [Docket No. 2002];

- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2016 (MSNs 7284 and 7318) and Certain Related Agreements* [Docket No. 2004];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2015 (MSNs 6511, 6617, 6692, 6739, 6746, and 6767)* [Docket No. 2015];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 4281 and 4284) and Certain Related Agreements* [Docket No. 2016]; and
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 3988 and 3992) and Certain Related Agreements* [Docket No. 2017].

6. Pursuant to the Rejection Orders, Burnham has thirty days from the date of each Rejection Order to file a new claim or amend a previously filed claim against any of the Debtors, for “damages based upon or resulting from the assumption, rejection or amendment of any unexpired leases or subleases related to each of the transactions.” Burnham does not believe that the thirty day deadline imposed by the Rejection Orders applies to the filing of administrative expense claims—which are not claims currently subject to any bar date and do not arise from the rejection of the applicable agreements. However, for the avoidance of doubt, Burnham has complied with such 30 day deadline, but reserves all rights to amend, supplement, or modify these Claims.

7. Necessity of Addendum. This addendum is annexed to the official administrative proof of claim form that set forth a summary of Burnham’s Claims against the Debtors. This addendum provides the parties in interest with relevant information and a description of the Claims.

8. Supporting Documentation. The documentation supporting these Claims are voluminous and may already be in the Debtors' possession.

## II. The Claims

### A. The Personal Property Leases

9. The Debtors began contracting with Burnham in 2014 to arrange the financing and leasing of certain aircraft in exchange for certain fees (such services the "**Initiator Services**" and such fees the "**Initiator Fees**").

10. Burnham has not been paid the Initiator Fees for the Initiator Services the Debtors benefited from since the Petition Date.

11. As a result, Burnham files these Claims asserting any and all of its rights to Initiator Fees and other fees, remedies, damages, indemnities, and other claims (including contingent or unliquidated claims) against the Debtors arising on or after the Petition Date under, related to, or due under the following contracts (the "**Contracts**" together with the guarantees, Lease Agreements (as defined below), and any and all other related agreements, amendments or supplements thereto or modifications thereof, and any additional documents, agreements or instruments delivered in connection with any such related agreement, amendment, supplement or modification):

- That certain Framework Agreement, dated as of July 30, 2015, among Avianca EAIV 2015-1 Trust and Avianca EAIV 2015-2 Trust, as Borrowers, Octo-Aircraft Leasing LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the purchasers identified on Schedule I thereto, Wells Fargo Bank, National Association, as Security Trustee, with Babcock & Brown Securities LLC f/k/a Burnham Sterling Securities LLC and Burnham Sterling & Company LLC as Initiators (the "**2015 EAIV Financing**");
- That certain Loan Agreement, dated as of December 14, 2016, among Avianca EAIV 2016-3 Trust, as Borrower, Uni-Aircraft Leasing LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the lenders identified on Schedule I thereto, and Wilmington Trust Company, as Security Trustee, with Burnham Sterling & Company LLC as Initiator (the "**37511 Financing**");

- That certain Loan Agreement, dated as of August 24, 2016, among Avianca EAIV 2016-1 Trust, as Borrower, Tri-Aircraft Leasing II LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the lenders identified on Schedule I thereto, and Wilmington Trust Company, as Security Trustee, with Burnham Sterling & Company LLC as Initiator (the “**7284 Financing**”);
- That certain Loan Agreement, dated as of October 14, 2016, among Avianca EAIV 2016-1 Trust, as Borrower, Tri-Aircraft Leasing II LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the lenders identified on Schedule I thereto, and Wilmington Trust Company, as Security Trustee, with Burnham Sterling & Company LLC as Initiator (the “**7318 Financing**”);
- That certain Loan Facility Agreement, dated as of October 26, 2017, among FLIP No. 168 Co., Ltd. & FLIP No. 169 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as the Original Lenders, Sumitomo Mitsui Banking Corporation, New York Branch, as Facility Agent, and Wilmington Trust, National Association, as Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**39407 Financing**”);
- That certain Loan Facility Agreement, dated November 30, 2017, among San Agustin Leasing Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Sumitomo Mitsui Banking Corporation, New York Branch, as Facility Agent and Security Agent, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**7887 Financing**”);
- That certain Loan Facility Agreement, dated December 4, 2017, among Los Katios Leasing Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Sumitomo Mitsui Banking Corporation, New York Branch, as Facility Agent and Security Agent, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**7928 Financing**”);
- That certain ECA Loan Agreement, dated September 25, 2018, among Malpelo Leasing Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original ECA Lenders, ING Capital LLC, as ECA Facility Agent, and Wilmington Trust SP Services (Dublin) Limited, as Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**65315 Financing**”);
- That certain Loan Facility Agreement, dated July 24, 2018, among Condor Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Bank of Utah, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**8300 Financing**”);
- That certain Loan Facility Agreement, dated April 24, 2019, among JPA No. 151 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Woori Bank, Tokyo Branch, as Facility Agent and Security Trustee, with



Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**3988 Financing**”);

- That certain Loan Facility Agreement, dated April 25, 2019, among JPA No. 152 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Woori Bank, Tokyo Branch, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**3992 Financing**”);
- That certain Loan Facility Agreement, dated April 23, 2019, among JPA No. 159 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Wilmington Trust Company, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**4281 Financing**”); and
- That certain Loan Facility Agreement, dated April 24, 2019, among JPA No. 160 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Wilmington Trust Company, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**4284 Financing**”).

12. The Contracts provide that the Debtors have an unconditional obligation to pay Burnham (which is referred to as the “Initiator” in the relevant agreements), Burnham’s compensation (*i.e.*, the “Initiator Compensation”) through the payment of “Additional Rental Payments” on a schedule set forth in the various lease agreements entered into by the Debtors (each applicable lease agreement or sublease agreement, the “**Lease Agreements**”):

The Lessee shall on each Additional Rental Payment Date pay to the Lessor at the Initiator Account, by way of additional rental payment, instalments of the Initiator Compensation . . . . The Sub-Lessee acknowledges that the Initiator has already provided services prior to the Delivery Date, and accordingly agrees that the Sub-Lessee’s obligations to pay the Initiator Fees hereunder are unconditional.

*See e.g.*, Section 5.2 of that certain Amended and Restated Aircraft Lease Agreement (MSN 3992), dated April 25, 2019, between Aircol 7, as Lessor, and Aerovías Del Continente Americano S.A., as Lessee (the “**MSN 3992 Personal Property Contract**”).

13. Burnham is expressly authorized to enforce its right to payment under the Lease Agreements against the Debtors:

The agreement as to the payment of the Initiator Compensation under this Lease is a bilateral matter as between the Lessee and the Initiator, and no consent or act is required by the Lessor for the Initiator to enforce its rights hereunder, or for the Lessee and the Initiator to agree any amendment or variation of any payment of Initiator Compensation.

See Section 5.2(f) of that certain MSN 3992 Personal Property Contract.

14. Burnham is also designated as an express third-party beneficiary under the Lease Agreements, entitled to enforce its rights under such agreements:

The Initiator shall be entitled to enforce its rights against the Lessee and Lessor under and in connection with this Clause 5.2 as a third party, notwithstanding that the Initiator is not a signatory to this Agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt, the Initiator shall have the right to bring a claim directly against the Lessee and/or the Guarantor for any Initiator Compensation and any other amounts payable to the Initiator that become due and unpaid under this Agreement, and such right shall not be reduced, diminished or otherwise affected in any respect detrimental to the Initiator as a result of Initiator not being a party to this Agreement. Any obligation in connection with Initiator's deficiency claim against the Lessee (or Guarantor) shall only be released upon actual receipt by Initiator of the relevant amounts. Any amounts payable by the Lessee to the Initiator in respect of such deficiency claim shall be paid by Lessee (or Guarantor) directly to the Initiator.

See e.g., Section 5.2(j) of that certain MSN 3992 Personal Property Contract.

15. As set forth below, the Claims are entitled to an administrative expense status under both Bankruptcy Code sections 365(d)(5) and 503(b).

B. Bankruptcy Code Section 365(d)(5)

16. Bankruptcy Code section 365(d)(5) obligates a debtor, after sixty days from its petition date, to "timely perform *all of the obligations*" on leases of personal property "until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title. . . ." Consequently, pursuant to Bankruptcy Code section 365(d)(5), an administrative claim arises with respect to all unperformed obligations accruing after the first sixty days of the bankruptcy case. And

administrative claims arising under a personal property lease under 365(d)(5) “are based upon the terms of the lease and not the benefit to the bankruptcy estate.” *In re Lakeshore Const. Co. of Wolfeboro, Inc.*, 390 B.R. 751 (Bankr. D.N.H. 2008); *In re Wyoming Sand and Stone Co.*, 393 B.R. 359, 361 (M.D. Pa. 2008) (“Benefit to the estate is not an issue under § 365(d)(5), and, in the absence of intervening action by the Debtor, the obligation to perform under the lease remains.”).

17. Here, the applicable Lease Agreements obligate the payment of Burnham’s fees as “Additional Rent” and indisputably fall within the contractual obligations that give rise to an administrative expense claim under Bankruptcy Code section 365(d)(5). *Wyoming*, 393 B.R. at 361 (concluding that no showing of a benefit to the estate is required and “the Court has little discretion but to award [the applicable creditor] an allowance for that time period from the 60th day after filing until surrender of the equipment . . .”); *see also In re Hayes Lemmerz Int’l, Inc.*, 340 B.R. 461, 472 (Bankr. D. Del. 2006) (“Unlike parties claiming administrative expense status under section 503(b), lessors claiming under section 365(d)(10) need not prove they conferred any benefit upon the estate.”); *In re Glob. Container Lines Ltd.*, No. 09-78585 (AST), 2010 Bankr. LEXIS 5596, at \*8 (Bankr. E.D.N.Y. Feb. 25, 2010) (noting that section 365(d)(5) “expressly overrides Section 503(b)(1), again, unless the equities require otherwise,” requirement of showing a benefit to the estate).

18. Here, the sixtieth day from the Petition Date was July 9, 2020. The Rejection Orders are not yet effective, and will only become effective upon the Debtors entry into a new aircraft lease and new guarantee for each aircraft (the “**Rejection Date**”). Thus, Burnham’s Claims continue to accrue until such Rejection Date occurs.

19. Accordingly, for the foregoing reasons, Bankruptcy Code section 365(d)(5) requires the Debtors to pay Burnham administrative fees under the Contracts from the sixtieth day of these Chapter 11 Cases through the Rejection Date.

C. Section 503(b) of the Bankruptcy Code

20. In addition, Burnham is entitled to an administrative expense claim from the Petition Date through the Rejection Date pursuant to Bankruptcy Code section 503(b)(1). Bankruptcy Code section 503(b)(1) provides that the actual, necessary costs and expenses of preserving the Debtors' estate constitute administrative expenses, and that a party may file a request for payment of administrative expenses. 11 U.S.C. § 503(b)(1). Under section 503, the debtor must pay the counterparty to a lease agreement the reasonable administrative expense for the use of leased property that has benefited the bankruptcy estate. *See In re Patient Education Media, Inc.*, 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998); *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 531 (1984) ("If the debtor-in-possession elects to continue to receive benefits from the executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services . . ."). The Second Circuit has recognized the presumption that the payment terms of a lease are a reasonable measure of the administrative expenses to be paid by a debtor. *Farber v. Wards Co., Inc.*, 825 F.2d 684, 689-90 (2d Cir. 1987).

21. Here, the use of the leased aircraft pursuant to the terms of the Contracts by the Debtors after the commencement of the Chapter 11 Cases provided a clear and undisputed benefit to the Debtors' estate and Burnham's Claims arising under such Contracts constitutes an administrative expense claim allowable under Bankruptcy Code section 503(b).

D. Claims Amount

22. For the foregoing reasons, pursuant to Bankruptcy Code sections 365(d)(5) and 503(b)(1) the following amounts must be paid as administrative expenses as such obligations arise under the Contracts.

<b>Burnham Sterling &amp; Company LLC</b>				
<b><u>MSN</u></b>	<b><u>Currency</u></b>	<b><u>Description</u></b>	<b><u>(A)</u></b>	<b><u>(B)</u></b>
			5/10/2020 - 8/23/2021	Post-Petition Default Interest
6617	USD	2015 EAIV-1	\$24,206.50	\$1,193.83
6692	USD	2015 EAIV-1	\$29,056.60	\$1,469.91
6739	USD	2015 EAIV-1	\$29,056.60	\$1,452.58
37507	USD	2015 EAIV-1	\$77,130.60	\$3,795.60
6767	USD	2015 EAIV-2	\$34,056.35	\$1,689.76
6511	USD	2015 EAIV-2	\$34,056.35	\$1,665.61
37508	USD	2015 EAIV-2	\$77,130.60	\$3,848.91
6746	USD	2015 EAIV-2	\$29,056.60	\$1,443.92
37511	USD	2016 EAIV	\$170,625.00	\$10,244.79
7284	EUR	2016 EAIV	€55,039.15	€2,359.08
7318	EUR	2016 EAIV	€56,173.40	€2,407.70
39407	USD	2017 JOLCO	\$287,741.67	\$12,388.94
7887	USD	2017 JOLCO	\$171,855.01	\$7,177.71
7928	USD	2017 JOLCO	\$171,855.01	\$7,239.10
65315	USD	2018 JOLCO	\$232,560.00	\$8,677.12
8300	USD	2018 JOLCO	\$155,932.99	\$7,052.97
3988	USD	2019 JOLCO	\$81,879.80	\$1,949.62
3992	USD	2019 JOLCO	\$81,879.80	\$1,940.38
4281	USD	2019 JOLCO	\$69,502.09	\$2,878.03
4284	USD	2019 JOLCO	\$69,502.09	\$2,882.59
	<b>USD</b>	<b>Grand Total</b>	<b>\$1,827,083.66</b>	<b>\$78,991.37</b>
	<b>EUR</b>	<b>Grand Total</b>	<b>€111,212.55</b>	<b>€4,766.78</b>

**III. Reservation of Rights**

23. Right to Amend. Burnham expressly reserves the right to amend or supplement the Claims to correct, clarify, explain, expand, supplement or add to any portion of the Claims asserted herein, or otherwise, to both increase the dollar amounts of such Claims and provide additional information and documentation as is necessary to pursue these and such additional claims as are, or may be, held by Burnham, including, without limitation, the right to amend the Claims in the event an objection is made against any of the Claims or a claim is asserted against Burnham. Moreover, Burnham specifically reserves the right to conduct discovery with respect to this matter in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

24. No Admission. Nothing contained in the Claims shall be deemed an admission by Burnham. Burnham expressly reserves the right to withdraw the Claims as if it had never been filed.

25. Additional Reservations. In addition, the filing of these Claims is not intended, and shall not be deemed or construed as: (a) consent by Burnham to the jurisdiction of the Bankruptcy Court or any other court for any purpose other than with respect to issues directly related to the claims asserted in the Claims; (b) a waiver or release of any right of Burnham to have all disputes with the Debtor resolved through arbitration as may be provided in the documentation governing the Claims, notwithstanding whether or not such matters are designated as “core proceedings” pursuant to 28 U.S.C. § 157(b)(2); (c) consent by Burnham to a trial in the Bankruptcy Court or in any other court of any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise; (d) a waiver or release of the right of Burnham to have any and all final orders in any and all non-core matters

or proceedings entered only after de novo review by the United States District Court Judge; (e) a waiver or release of any right which Burnham may have to a jury trial; (f) a waiver of the right to move to withdraw the reference in respect of the subject matter of the Claims, any objection thereto or other proceeding which may be commenced in the Chapter 11 Cases against or otherwise involving Burnham; (g) an election of remedies; or (h) an admission of personal jurisdiction.

**IV. Notices Regarding the Claim**

26. All notices and correspondence with respect to the Claims (and, if filed, any objections thereto) must be sent to Burnham, and its counsel, at the following addresses:

BURNHAM STERLING AND COMPANY LLC  
29 River Road  
Suite 102  
Cos Cob, CT 06807

With a copy to:

Jason Kaplan  
Matthew Kremer  
O'MELVENY AND MYERS LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

Furthermore, designation of Jason Kaplan, Esq. and Matthew Kremer, Esq. of O'Melveny and Myers LLP ("**O'Melveny**") to receive all notices and correspondence related to the Claims shall not be construed as an appointment of Jason Kaplan, Esq., Matthew Kremer, Esq. and/or O'Melveny as authorized agents of Burnham, either expressly or impliedly, for purposes of receiving service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure made applicable pursuant to Federal Rules of Bankruptcy Procedure 7004 or other applicable law.

<b>UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</b>	<b>PROOF OF ADMINISTRATIVE CLAIM</b>			
THIS FORM SHOULD NOT BE USED FOR CLAIMS EXCLUDED BY SAID NOTICE NOR SHOULD IT BE USED FOR ANY CLAIMS THAT ARE NOT OF A KIND AND ENTITLED TO PRIORITY IN ACCORDANCE WITH 11 U.S.C. §§ 503(b) AND 507(a)(2), IT SHOULD NOT BE USED BY ANY PERSON ASSERTING CLAIMS PURSUANT TO SECTION 503(B)(9) OF THE BANKRUPTCY CODE.				
Fill in this information to identify the case (Select only one Debtor per claim form):				
<input type="checkbox"/> Aero Transporte de Carga Unión, S.A. de C.V. (Case No. 20-11140)	<input type="checkbox"/> Aeroinversiones de Honduras, S.A. (Case No. 20-11141)	<input type="checkbox"/> Aerovías del Continente Americano S.A. Avianca (Case No. 20-11134)	<input type="checkbox"/> Airlease Holdings One Ltd. (Case No. 20-11142)	<input type="checkbox"/> America Central (Canada) Corp. (Case No. 20-11143)
<input type="checkbox"/> America Central Corp. (Case No. 20-11144)	<input type="checkbox"/> AV International Holdco S.A. (Case No. 20-11145)	<input type="checkbox"/> AV International Holdings S.A. (Case No. 20-11146)	<input type="checkbox"/> AV International Investments S.A. (Case No. 20-11147)	<input type="checkbox"/> AV International Ventures S.A. (Case No. 20-11148)
<input type="checkbox"/> AV Investments One Colombia S.A.S. (Case No. 20-11135)	<input type="checkbox"/> AV Investments Two Colombia S.A.S. (Case No. 20-11136)	<input type="checkbox"/> AV Taca International Holdo S.A. (Case No. 20-11149)	<input type="checkbox"/> Avianca Costa Rica S.A. (Case No. 20-11150)	<input type="checkbox"/> Avianca Holdings S.A. (Case No. 11133)
<input type="checkbox"/> Avianca Leasing, LLC (Case No. 20-11151)	<input type="checkbox"/> Avianca, Inc. (Case No. 20-11132)	<input type="checkbox"/> Avianca-Ecuador S.A. (Case No. 20-11152)	<input type="checkbox"/> Aviaservicios, S.A. (Case No. 20-11153)	<input type="checkbox"/> Aviateca, S.A. (Case No. 20-11154)
<input type="checkbox"/> Avifreight Holding Mexico, S.A.P.I. de C.V. (Case No. 20-11155)	<input type="checkbox"/> C.R. International Enterprises, Inc. (Case No. 20-11156)	<input type="checkbox"/> Grupo Taca Holdings Limited (Case No. 20-11157)	<input type="checkbox"/> International Trade Marks Agency Inc. (Case No. 20-11158)	<input type="checkbox"/> Inversiones del Caribe, S.A. (Case No. 20-11159)
<input type="checkbox"/> Islaña de Inversiones, S.A. de C.V. (Case No. 20-11160)	<input type="checkbox"/> Latin Airways Corp. (Case No. 20-11161)	<input type="checkbox"/> Latin Logistics, LLC (Case No. 20-11162)	<input type="checkbox"/> Nicaragüense de Aviación, Sociedad Anónima (Case No. 20-11163)	<input type="checkbox"/> Regional Express Américas S.A.S. (Case No. 20-11137)
<input type="checkbox"/> Ronair N.V. (Case No. 20-11164)	<input type="checkbox"/> Servicio Terrestre, Aéreo y Rampa S.A. (Case No. 20-11165)	<input type="checkbox"/> Servicios Aeroportuarios Integrados SAI S.A.S. (Case No. 20-11138)	<input type="checkbox"/> Taca de Honduras, S.A. de C.V. (Case No. 20-11166)	<input type="checkbox"/> Taca de México, S.A. (Case No. 20-11167)
<input checked="" type="checkbox"/> Taca International Airlines S.A. (Case No. 20-11168)	<input type="checkbox"/> Taca S.A. (Case No. 20-11169)	<input type="checkbox"/> Tampa Cargo S.A.S. (Case No. 20-11139)	<input type="checkbox"/> Technical and Training Services, S.A. de C.V. (Case No. 20-11170)	<input type="checkbox"/> AV Loyalty Bermuda Ltd. (Case No. 20-12255)
<input type="checkbox"/> Aviacorp Enterprises S.A. (Case No. 20-12256)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name of Creditor (The person or entity to whom the debtor owes money or property)  Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your administrative expense claim. Attach copy of statement giving particulars.		Check here if this claim: <input type="checkbox"/> replaces or <input type="checkbox"/> amends a previously filed administrative expense claim.  Claim Number (if known):
Name and Addresses Where Notices Should be Sent:  Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC 29 River Road Suite 102 Cos Cob, CT 06807		Name and Addresses Where Payment Should be Sent (if different):		Dated:
1. BASIS FOR CLAIM: <input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Personal Injury/Wrongful Death <input type="checkbox"/> Wages (Dates): _____ <input type="checkbox"/> Money loaned <input type="checkbox"/> Taxes <input type="checkbox"/> Retiree Benefits as Defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Other (Specify): _____				
2. DESCRIPTION OF CLAIM (IF KNOWN): See Addendum				
3. TOTAL AMOUNT OF CLAIM: \$ See Addendum (Total)				

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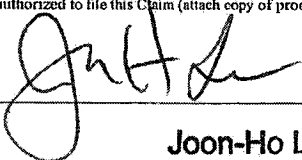
AUG 23 2021

KURTZMAN CARSON CONSULTANTS



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<p>4. <b>CREDITS AND SETOFFS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p> <p>5. <b>SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. Do not send original documents. If the documents are not available, explain. If the documents are voluminous, attach a summary. The Debtors may request full copies of your supporting documentation to substantiate the claim.</p> <p>6. <b>TIME-STAMPED COPY:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>	<p>THIS SPACE IS FOR COURT USE ONLY</p>
<p>Date: August 23, 2021</p>	<p>Sign and print the name and title, if any, of the creditor or other person authorized to file this Claim (attach copy of proof of attorney, if any)</p> 

**Joon-Ho Lee**  
Authorized Signatory

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AUG 23 2021

KURTZMAN CARSON CONSULTANTS

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11133 (MG)  
(Jointly Administered)

**ADDENDUM TO PROOF OF CLAIM OF  
BABCOCK & BROWN SECURITIES LLC**

Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC (“**Babcock**”), an unregistered entity providing financial advisory services, asserts the following claims (the “**Claims**”) against Avianca Holdings S.A. and its debtor-affiliates (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), and respectfully states as follows:

**I. Background**

1. Commencement of the Chapter 11 Cases. On May 10, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); AeroInversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00- 1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47- 2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. 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.

Code, as amended (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

2. Debtors-in-Possession. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108.

3. Joint Administration. The Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered under case number 20-11133 (MG).

4. Bar Date. On October 29, 2020, the Debtors filed the *Notice of Debtors’ Application for an Order (I) Establishing Bar Dates for Filing Proofs of Claim; (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures; (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims; (IV) Providing Certain Supplemental Relief* [Docket No. 1138] (the “**Bar Date Motion**”). On November 16, 2020, the Bankruptcy Court granted the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures, (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims, and (IV) Providing Certain Supplemental Relief* [Docket No. 1180] approving the relief sought in the Bar Date Motion and establishing January 20, 2021 at 11:59 p.m. (PT) as the bar date for filing proofs of claims in the Chapter 11 Cases for general creditors (the “**Bar Date**”). On January 20, 2021, Babcock timely filed proof of claim number 2057 by the Bar Date (the “**Prepetition Claims**”). The filing of these Claims is not intended to, and does not, amend the Prepetition Claims filed by Babcock.

5. Rejection Orders. To date, the Bankruptcy Court has entered six orders that impact Babcock (each, a “**Rejection Order**” and collectively, the “**Rejection Orders**”), which include:

- *Order Authorizing the Debtors to (I) Enter into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company*

*(MSN 7928) and Certain Related Agreements* [Docket No. 1929], as subsequently modified by the *Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and (II) Reject Pre-Petition Aircraft Lease (MSN 8300) and Certain Related Agreements*, [Docket No. 2002];

- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIIV 2016 (MSNs 7284 and 7318) and Certain Related Agreements* [Docket No. 2004];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIIV 2015 (MSNs 6511, 6617, 6692, 6739, 6746, and 6767)* [Docket No. 2015];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 4281 and 4284) and Certain Related Agreements* [Docket No. 2016]; and
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 3988 and 3992) and Certain Related Agreements* [Docket No. 2017].

6. Pursuant to the Rejection Orders, Babcock has thirty days from the date of each Rejection Order to file a new claim or amend a previously filed claim against any of the Debtors, for “damages based upon or resulting from the assumption, rejection or amendment of any unexpired leases or subleases related to each of the transactions.” Babcock does not believe that the thirty day deadline imposed by the Rejection Orders applies to the filing of administrative expense claims—which are not claims currently subject to any bar date and do not arise from the rejection of the applicable agreements. However, for the avoidance of doubt, Babcock has complied with such 30 day deadline, but reserves all rights to amend, supplement, or modify these Claims.

7. Necessity of Addendum. This addendum is annexed to the official administrative proof of claim form that set forth a summary of Babcock’s Claims against the Debtors. This addendum provides the parties in interest with relevant information and a description of the Claim.

8. Supporting Documentation. The documentation supporting these Claims are voluminous and may already be in the Debtors' possession. Nonetheless, such documentation is available upon request.

## II. The Claims

### A. The Personal Property Leases

9. The Debtors began contracting with Babcock in 2014 to arrange the financing and leasing of certain aircraft in exchange for certain fees (such services the "**Initiator Services**" and such fees the "**Initiator Fees**").

10. Babcock has not been paid the Initiator Fees for the Initiator Services the Debtors benefited from since the Petition Date.

11. As a result, Babcock files these Claims asserting any and all of its rights to Initiator Fees and other fees, remedies, damages, indemnities, and other claims (including contingent or unliquidated claims) against the Debtors arising on or after the Petition Date under, related to, or due under the following contracts (the "**Contracts**" together with the guarantees, lease agreements, sublease agreements, and any and all other related agreements, amendments or supplements thereto or modifications thereof, and any additional documents, agreements or instruments delivered in connection with any such related agreement, amendment, supplement or modification):

That certain Framework Agreement, dated as of July 30, 2015, among Avianca EAIV 2015-1 Trust and Avianca EAIV 2015-2 Trust, as Borrowers, Octo-Aircraft Leasing LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the purchasers identified on Schedule I thereto, Wells Fargo Bank, National Association, as Security Trustee, with Babcock & Brown Securities LLC f/k/a Burnham Sterling Securities LLC and Burnham Sterling & Company LLC as Initiators (the "**2015 EAIV Financing**").

12. The Contracts provide that the Debtors have an unconditional obligation to pay Babcock (which is referred to as the “Initiator” in the relevant agreements) its compensation through the payment of the Initiator Fee on a schedule set forth in Contracts.

the Owner agrees to pay to the Security Trustee, for account of the Initiator, as and when due, the Initiator Fee.

*See e.g.*, Section 12.15 of that certain Omnibus Amendment No. 1, dated July 30, 2015 of that certain Note Purchase Agreement [Avianca EAIIV 2015-1 Trust], dated July 30, 2015, between Wells Fargo Bank Northwest, National Association, as Owner, Avianca Holdings S.A., as Guarantor, and Aerovías Del Continente Americano S.A., as Lessee (the “**2015 EAIIV Personal Property Trust Amendment**”).

13. Babcock is designated as an express third-party beneficiary under the Contracts entitled to enforce its rights under such agreements:

The Initiator shall be an express third party beneficiary of (i) the provisions of this Agreement and any other Basic Document that relate to the obligation of the Obligors to pay and the time and manner of payment of the Initiator Fee, any applicable Accelerated Initiator Fee and any applicable Initiator Prepayment Fee (including, without limitation, the obligation of the Lessee under the Lease and/or the Guarantor under the Guaranty, as the case may be, to pay the Initiator Fee, any applicable Accelerated Initiator Fee and any applicable Initiator Prepayment Fee as Supplemental Rent) . . . .

*See e.g.*, Section 12.15 of that certain 2015 EAIIV Personal Property Trust Amendment.

14. As set forth below, these Claims are entitled to an administrative expense status under both Bankruptcy Code sections 365(d)(5) and 503(b).

B. Bankruptcy Code Section 365(d)(5)

15. Bankruptcy Code section 365(d)(5) obligates a debtor, after sixty days from its petition date, to “timely perform *all of the obligations*” on leases of personal property “until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title. . . .” Consequently,

pursuant to Bankruptcy Code section 365(d)(5), an administrative claim arises with respect to all unperformed obligations accruing after the first sixty days of the bankruptcy case. And administrative claims arising under a personal property lease under 365(d)(5) “are based upon the terms of the lease and not the benefit to the bankruptcy estate.” *In re Lakeshore Const. Co. of Wolfboro, Inc.*, 390 B.R. 751 (Bankr. D.N.H. 2008); *In re Wyoming Sand and Stone Co.*, 393 B.R. 359, 361 (M.D. Pa. 2008) (“Benefit to the estate is not an issue under § 365(d)(5), and, in the absence of intervening action by the Debtor, the obligation to perform under the lease remains.”).

16. Here, the applicable Contracts obligate the payment of Babcock’s fees and indisputably fall within the contractual obligations that give rise to an administrative expense claim under Bankruptcy Code section 365(d)(5). *Wyoming*, 393 B.R. at 361 (concluding that no showing of a benefit to the estate is required and “the Court has little discretion but to award [the applicable creditor] an allowance for that time period from the 60th day after filing until surrender of the equipment . . .”); *see also In re Hayes Lemmerz Int’l, Inc.*, 340 B.R. 461, 472 (Bankr. D. Del. 2006) (“Unlike parties claiming administrative expense status under section 503(b), lessors claiming under section 365(d)(10) need not prove they conferred any benefit upon the estate.”); *In re Glob. Container Lines Ltd.*, No. 09-78585 (AST), 2010 Bankr. LEXIS 5596, at \*8 (Bankr. E.D.N.Y. Feb. 25, 2010) (noting that section 365(d)(5) “expressly overrides Section 503(b)(1), again, unless the equities require otherwise,” requirement of showing a benefit to the estate).

17. Here, the sixtieth day from the Petition Date was July 9, 2020. The Rejection Orders are not yet effective, and will only become effective upon the Debtors entry into a new aircraft lease and new guarantee for each aircraft (the “**Rejection Date**”). Thus, Babcock’s Claims continue to accrue until such Rejection Date occurs.

18. Accordingly, for the foregoing reasons, Bankruptcy Code section 365(d)(5) requires the Debtors to pay Babcock administrative fees under the Contracts from the sixtieth day of these Chapter 11 Cases through the Rejection Date.

C. Section 503(b) of the Bankruptcy Code

19. In addition, Babcock is entitled to an administrative expense claim from the Petition Date through the Rejection Date pursuant to Bankruptcy Code section 503(b)(1). Bankruptcy Code section 503(b)(1) provides that the actual, necessary costs and expenses of preserving the Debtors' estate constitute administrative expenses, and that a party may file a request for payment of administrative expenses. 11 U.S.C. § 503(b)(1). Under section 503, the debtor must pay the counterparty to a lease agreement the reasonable administrative expense for the use of leased property that has benefited the bankruptcy estate. *See In re Patient Education Media, Inc.*, 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998); *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 531 (1984) ("If the debtor-in-possession elects to continue to receive benefits from the executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services . . . ."). The Second Circuit has recognized the presumption that the payment terms of a lease are a reasonable measure of the administrative expenses to be paid by a debtor. *Farber v. Wards Co., Inc.*, 825 F.2d 684, 689-90 (2d Cir. 1987).

20. Here, the use of the leased aircraft pursuant to the terms of the Contracts by the Debtors after the commencement of the Chapter 11 Cases provided a clear and undisputed benefit to the Debtors' estate and Babcock's Claims arising under such Contracts constitutes an administrative expense claim allowable under Bankruptcy Code section 503(b).



D. Claims Amount

21. For the foregoing reasons, pursuant to Bankruptcy Code sections 365(d)(5) and 503(b)(1) the following amounts must be paid as administrative expenses as such obligations arise under the Contracts.

<b>Babcock &amp; Brown Securities LLC</b>				
<u>MSN</u>	<u>Currency</u>	<u>Description</u>	<u>(A)</u>	<u>(B)</u>
			5/10/2020 - 8/23/2021	Post-Petition Default Interest
6617	USD	2015 EAIV-1	\$27,356.00	\$1,374.44
6692	USD	2015 EAIV-1	\$32,837.15	\$3,211.31
6739	USD	2015 EAIV-1	\$32,837.15	\$1,686.25
37507	USD	2015 EAIV-1	\$87,166.30	\$4,363.88
6767	USD	2015 EAIV-2	\$38,487.40	\$1,952.62
6511	USD	2015 EAIV-2	\$38,487.40	\$1,907.63
37508	USD	2015 EAIV-2	\$87,166.30	\$4,463.17
6746	USD	2015 EAIV-2	\$32,837.15	\$1,670.11
	<b>USD</b>	<b>Grand Total</b>	<b>\$377,174.85</b>	<b>\$20,629.40</b>

III. Reservation of Rights

22. Right to Amend. Babcock expressly reserves the right to amend or supplement the Claims to correct, clarify, explain, expand, supplement or add to any portion of the Claims asserted herein, or otherwise, to both increase the dollar amounts of such Claims and provide additional information and documentation as is necessary to pursue these and such additional claims as are, or may be, held by Babcock, including, without limitation, the right to amend the Claims in the event an objection is made against any of the Claims or a claim is asserted against Babcock. Moreover, Babcock specifically reserves the right to conduct discovery with respect to

this matter in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

23. No Admission. Nothing contained in these Claims shall be deemed an admission by Babcock. Babcock expressly reserves the right to withdraw the Claims as if it had never been filed.

24. Additional Reservations. In addition, the filing of these Claims is not intended, and shall not be deemed or construed as: (a) consent by Babcock to the jurisdiction of the Bankruptcy Court or any other court for any purpose other than with respect to issues directly related to the Claims asserted in the Claims; (b) a waiver or release of any right of Babcock to have all disputes with the Debtor resolved through arbitration as may be provided in the documentation governing the Claims, notwithstanding whether or not such matters are designated as “core proceedings” pursuant to 28 U.S.C. § 157(b)(2); (c) consent by Babcock to a trial in the Bankruptcy Court or in any other court of any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise; (d) a waiver or release of the right of Babcock to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by the United States District Court Judge; (e) a waiver or release of any right which Babcock may have to a jury trial; (f) a waiver of the right to move to withdraw the reference in respect of the subject matter of these Claims, any objection thereto or other proceeding which may be commenced in the Chapter 11 Cases against or otherwise involving Babcock; (g) an election of remedies; or (h) an admission of personal jurisdiction.

**IV. Notices Regarding the Claim**

25. All notices and correspondence with respect to the Claims (and, if filed, any objections thereto) must be sent to Babcock, and its counsel, at the following addresses:

BABCOCK & BROWN SECURITIES LLC  
29 River Road  
Suite 102  
Cos Cob, CT 06807

With a copy to:

Jason Kaplan  
Matthew Kremer  
O'MELVENY AND MYERS LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

Furthermore, designation of Jason Kaplan, Esq. and Matthew Kremer, Esq. of O'Melveny and Myers LLP ("O'Melveny") to receive all notices and correspondence related to the Claims shall not be construed as an appointment of Jason Kaplan, Esq., Matthew Kremer, Esq. and/or O'Melveny as authorized agents of Babcock, either expressly or impliedly, for purposes of receiving service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure made applicable pursuant to Federal Rules of Bankruptcy Procedure 7004 or other applicable law.

<b>UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</b>	<b>PROOF OF ADMINISTRATIVE CLAIM</b>			
THIS FORM SHOULD NOT BE USED FOR CLAIMS EXCLUDED BY SAID NOTICE NOR SHOULD IT BE USED FOR ANY CLAIMS THAT ARE NOT OF A KIND AND ENTITLED TO PRIORITY IN ACCORDANCE WITH 11 U.S.C. §§ 503(b) AND 507(a)(2), IT SHOULD NOT BE USED BY ANY PERSON ASSERTING CLAIMS PURSUANT TO SECTION 503(B)(9) OF THE BANKRUPTCY CODE.				
Fill in this information to identify the case (Select only one Debtor per claim form):				
<input type="checkbox"/> Aero Transporte de Carga Unión, S.A. de C.V. (Case No. 20-11140)	<input type="checkbox"/> Aeroinversiones de Honduras, S.A. (Case No. 20-11141)	<input type="checkbox"/> Aerovías del Continente Americano S.A. Avianca (Case No. 20-11134)	<input type="checkbox"/> Airlease Holdings One Ltd. (Case No. 20-11142)	<input type="checkbox"/> America Central (Canada) Corp. (Case No. 20-11143)
<input type="checkbox"/> America Central Corp. (Case No. 20-11144)	<input type="checkbox"/> AV International Holdco S.A. (Case No. 20-11145)	<input type="checkbox"/> AV International Holdings S.A. (Case No. 20-11146)	<input type="checkbox"/> AV International Investments S.A. (Case No. 20-11147)	<input type="checkbox"/> AV International Ventures S.A. (Case No. 20-11148)
<input type="checkbox"/> AV Investments One Colombia S.A.S. (Case No. 20-11135)	<input type="checkbox"/> AV Investments Two Colombia S.A.S. (Case No. 20-11136)	<input type="checkbox"/> AV Taca International Holdco S.A. (Case No. 20-11149)	<input type="checkbox"/> Avianca Costa Rica S.A. (Case No. 20-11150)	<input type="checkbox"/> Avianca Holdings S.A. (Case No. 11133)
<input type="checkbox"/> Avianca Leasing, LLC (Case No. 20-11151)	<input type="checkbox"/> Avianca, Inc. (Case No. 20-11132)	<input type="checkbox"/> Avianca-Ecuador S.A. (Case No. 20-11152)	<input type="checkbox"/> Aviaservicios, S.A. (Case No. 20-11153)	<input type="checkbox"/> Aviateca, S.A. (Case No. 20-11154)
<input type="checkbox"/> Avifreight Holding Mexico, S.A.P.I. de C.V. (Case No. 20-11155)	<input type="checkbox"/> C.R. International Enterprises, Inc. (Case No. 20-11156)	<input type="checkbox"/> Grupo Taca Holdings Limited (Case No. 20-11157)	<input type="checkbox"/> International Trade Marks Agency Inc. (Case No. 20-11158)	<input type="checkbox"/> Inversiones del Caribe, S.A. (Case No. 20-11159)
<input type="checkbox"/> Isla de Inversiones, S.A. de C.V. (Case No. 20-11160)	<input type="checkbox"/> Latin Airways Corp. (Case No. 20-11161)	<input type="checkbox"/> Latin Logistics, LLC (Case No. 20-11162)	<input type="checkbox"/> Nicaragüense de Aviación, Sociedad Anónima (Case No. 20-11163)	<input type="checkbox"/> Regional Express Americas S.A.S. (Case No. 20-11137)
<input type="checkbox"/> Ronair N.V. (Case No. 20-11164)	<input type="checkbox"/> Servicio Terrestre, Aéreo y Rampa S.A. (Case No. 20-11165)	<input type="checkbox"/> Servicios Aeroportuarios Integrados SAI S.A.S. (Case No. 20-11138)	<input type="checkbox"/> Taca de Honduras, S.A. de C.V. (Case No. 20-11166)	<input type="checkbox"/> Taca de México, S.A. (Case No. 20-11167)
<input checked="" type="checkbox"/> Taca International Airlines S.A. (Case No. 20-11168)	<input type="checkbox"/> Taca S.A. (Case No. 20-11169)	<input type="checkbox"/> Tampa Cargo S.A.S. (Case No. 20-11139)	<input type="checkbox"/> Technical and Training Services, S.A. de C.V. (Case No. 20-11170)	<input type="checkbox"/> AV Loyalty Bermuda Ltd. (Case No. 20-12255)
<input type="checkbox"/> Aviacoop Enterprises S.A. (Case No. 20-12256)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name of Creditor (The person or entity to whom the debtor owes money or property)  Burnham Sterling and Company LLC		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your administrative expense claim. Attach copy of statement giving particulars.		Check here if this claim: <input type="checkbox"/> replaces or <input type="checkbox"/> amends a previously filed administrative expense claim.
Name and Addresses Where Notices Should be Sent:  Burnham Sterling and Company LLC 29 River Road Suite 102 Cos Cob, CT 06807		Name and Addresses Where Payment Should be Sent (if different):		
1. BASIS FOR CLAIM:				
<input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Personal Injury/Wrongful Death <input type="checkbox"/> Wages (Dates): _____				
<input type="checkbox"/> Money loaned <input type="checkbox"/> Taxes <input type="checkbox"/> Retiree Benefits as Defined in 11 U.S.C. § 1114(a)				
<input type="checkbox"/> Other (Specify): _____				
2. DESCRIPTION OF CLAIM (IF KNOWN):      See Addendum				
3. TOTAL AMOUNT OF CLAIM:      \$ See Addendum _____ (Total)				

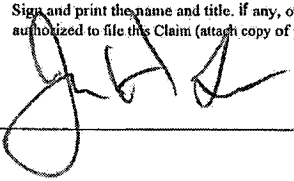
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AUG 23 2021

KURTZMAN CARSON CONSULTANTS



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<p>4. <b>CREDITS AND SETOFFS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p> <p>5. <b>SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. Do not send original documents. If the documents are not available, explain. If the documents are voluminous, attach a summary. The Debtors may request full copies of your supporting documentation to substantiate the claim.</p> <p>6. <b>TIME-STAMPED COPY:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>	<p>THIS SPACE IS FOR COURT USE ONLY</p>
<p>Date: August 23, 2021</p>	<p>Sign and print the name and title, if any, of the creditor or other person authorized to file this Claim (attach copy of proof of attorney, if any)</p> 

Joon-Ho Lee  
Authorized Signatory

RECEIVED

AUG 23 2021

KURTZMAN CARSON CONSULTANTS

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

In re

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11133 (MG)  
(Jointly Administered)

**ADDENDUM TO PROOF OF CLAIM OF  
BURNHAM STERLING AND COMPANY LLC**

Burnham Sterling and Company LLC (“**Burnham**”), an unregistered entity providing financial advisory services, asserts the following claims (the “**Claims**”) against Avianca Holdings S.A. and its debtor-affiliates (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), and respectfully states as follows:

**I. Background**

1. Commencement of the Chapter 11 Cases. On May 10, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States

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<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); AeroInversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00- 1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47- 2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. 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.

Code, as amended (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

2. Debtors-in-Possession. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108.

3. Joint Administration. The Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered under case number 20-11133 (MG).

4. Bar Date. On October 29, 2020, the Debtors filed the *Notice of Debtors’ Application for an Order (I) Establishing Bar Dates for Filing Proofs of Claim; (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures; (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims; (IV) Providing Certain Supplemental Relief* [Docket No. 1138] (the “**Bar Date Motion**”). On November 16, 2020, the Bankruptcy Court granted the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures, (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims, and (IV) Providing Certain Supplemental Relief* [Docket No. 1180] approving the relief sought in the Bar Date Motion and establishing January 20, 2021 at 11:59 p.m. (PT) as the bar date for filing proofs of claims in the Chapter 11 Cases for general creditors (the “**Bar Date**”). On January 20, 2021, Burnham timely filed proof of claim number 2055 by the Bar Date (the “**Prepetition Claims**”). The filing of these Claims is not intended to, and does not, amend the Prepetition Claims filed by Burnham.

5. Rejection Orders. To date, the Bankruptcy Court has entered six orders that impact Burnham (each, a “**Rejection Order**” and collectively, the “**Rejection Orders**”), which include:

- *Order Authorizing the Debtors to (I) Enter into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company*

*(MSN 7928) and Certain Related Agreements* [Docket No. 1929], as subsequently modified by the *Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and (II) Reject Pre-Petition Aircraft Lease (MSN 8300) and Certain Related Agreements*, [Docket No. 2002];

- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2016 (MSNs 7284 and 7318) and Certain Related Agreements* [Docket No. 2004];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2015 (MSNs 6511, 6617, 6692, 6739, 6746, and 6767)* [Docket No. 2015];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 4281 and 4284) and Certain Related Agreements* [Docket No. 2016]; and
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 3988 and 3992) and Certain Related Agreements* [Docket No. 2017].

6. Pursuant to the Rejection Orders, Burnham has thirty days from the date of each Rejection Order to file a new claim or amend a previously filed claim against any of the Debtors, for “damages based upon or resulting from the assumption, rejection or amendment of any unexpired leases or subleases related to each of the transactions.” Burnham does not believe that the thirty day deadline imposed by the Rejection Orders applies to the filing of administrative expense claims—which are not claims currently subject to any bar date and do not arise from the rejection of the applicable agreements. However, for the avoidance of doubt, Burnham has complied with such 30 day deadline, but reserves all rights to amend, supplement, or modify these Claims.

7. Necessity of Addendum. This addendum is annexed to the official administrative proof of claim form that set forth a summary of Burnham’s Claims against the Debtors. This addendum provides the parties in interest with relevant information and a description of the Claims.



8. Supporting Documentation. The documentation supporting these Claims are voluminous and may already be in the Debtors' possession.

## II. The Claims

### A. The Personal Property Leases

9. The Debtors began contracting with Burnham in 2014 to arrange the financing and leasing of certain aircraft in exchange for certain fees (such services the "**Initiator Services**" and such fees the "**Initiator Fees**").

10. Burnham has not been paid the Initiator Fees for the Initiator Services the Debtors benefited from since the Petition Date.

11. As a result, Burnham files these Claims asserting any and all of its rights to Initiator Fees and other fees, remedies, damages, indemnities, and other claims (including contingent or unliquidated claims) against the Debtors arising on or after the Petition Date under, related to, or due under the following contracts (the "**Contracts**" together with the guarantees, Lease Agreements (as defined below), and any and all other related agreements, amendments or supplements thereto or modifications thereof, and any additional documents, agreements or instruments delivered in connection with any such related agreement, amendment, supplement or modification):

- That certain Framework Agreement, dated as of July 30, 2015, among Avianca EAIV 2015-1 Trust and Avianca EAIV 2015-2 Trust, as Borrowers, Octo-Aircraft Leasing LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the purchasers identified on Schedule I thereto, Wells Fargo Bank, National Association, as Security Trustee, with Babcock & Brown Securities LLC f/k/a Burnham Sterling Securities LLC and Burnham Sterling & Company LLC as Initiators (the "**2015 EAIV Financing**");
- That certain Loan Agreement, dated as of December 14, 2016, among Avianca EAIV 2016-3 Trust, as Borrower, Uni-Aircraft Leasing LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the lenders identified on Schedule I thereto, and Wilmington Trust Company, as Security Trustee, with Burnham Sterling & Company LLC as Initiator (the "**37511 Financing**");

- That certain Loan Agreement, dated as of August 24, 2016, among Avianca EAIV 2016-1 Trust, as Borrower, Tri-Aircraft Leasing II LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the lenders identified on Schedule I thereto, and Wilmington Trust Company, as Security Trustee, with Burnham Sterling & Company LLC as Initiator (the “**7284 Financing**”);
- That certain Loan Agreement, dated as of October 14, 2016, among Avianca EAIV 2016-1 Trust, as Borrower, Tri-Aircraft Leasing II LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the lenders identified on Schedule I thereto, and Wilmington Trust Company, as Security Trustee, with Burnham Sterling & Company LLC as Initiator (the “**7318 Financing**”);
- That certain Loan Facility Agreement, dated as of October 26, 2017, among FLIP No. 168 Co., Ltd. & FLIP No. 169 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as the Original Lenders, Sumitomo Mitsui Banking Corporation, New York Branch, as Facility Agent, and Wilmington Trust, National Association, as Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**39407 Financing**”);
- That certain Loan Facility Agreement, dated November 30, 2017, among San Agustin Leasing Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Sumitomo Mitsui Banking Corporation, New York Branch, as Facility Agent and Security Agent, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**7887 Financing**”);
- That certain Loan Facility Agreement, dated December 4, 2017, among Los Katios Leasing Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Sumitomo Mitsui Banking Corporation, New York Branch, as Facility Agent and Security Agent, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**7928 Financing**”);
- That certain ECA Loan Agreement, dated September 25, 2018, among Malpelo Leasing Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original ECA Lenders, ING Capital LLC, as ECA Facility Agent, and Wilmington Trust SP Services (Dublin) Limited, as Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**65315 Financing**”);
- That certain Loan Facility Agreement, dated July 24, 2018, among Condor Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Bank of Utah, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**8300 Financing**”);
- That certain Loan Facility Agreement, dated April 24, 2019, among JPA No. 151 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Woori Bank, Tokyo Branch, as Facility Agent and Security Trustee, with

Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**3988 Financing**”);

- That certain Loan Facility Agreement, dated April 25, 2019, among JPA No. 152 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Woori Bank, Tokyo Branch, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**3992 Financing**”);
- That certain Loan Facility Agreement, dated April 23, 2019, among JPA No. 159 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Wilmington Trust Company, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**4281 Financing**”); and
- That certain Loan Facility Agreement, dated April 24, 2019, among JPA No. 160 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Wilmington Trust Company, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**4284 Financing**”).

12. The Contracts provide that the Debtors have an unconditional obligation to pay Burnham (which is referred to as the “Initiator” in the relevant agreements), Burnham’s compensation (*i.e.*, the “Initiator Compensation”) through the payment of “Additional Rental Payments” on a schedule set forth in the various lease agreements entered into by the Debtors (each applicable lease agreement or sublease agreement, the “**Lease Agreements**”):

The Lessee shall on each Additional Rental Payment Date pay to the Lessor at the Initiator Account, by way of additional rental payment, instalments of the Initiator Compensation . . . . The Sub-Lessee acknowledges that the Initiator has already provided services prior to the Delivery Date, and accordingly agrees that the Sub-Lessee’s obligations to pay the Initiator Fees hereunder are unconditional.

*See e.g.*, Section 5.2 of that certain Amended and Restated Aircraft Lease Agreement (MSN 3992), dated April 25, 2019, between Aircol 7, as Lessor, and Aerovías Del Continente Americano S.A., as Lessee (the “**MSN 3992 Personal Property Contract**”).

13. Burnham is expressly authorized to enforce its right to payment under the Lease Agreements against the Debtors:

The agreement as to the payment of the Initiator Compensation under this Lease is a bilateral matter as between the Lessee and the Initiator, and no consent or act is required by the Lessor for the Initiator to enforce its rights hereunder, or for the Lessee and the Initiator to agree any amendment or variation of any payment of Initiator Compensation.

See Section 5.2(f) of that certain MSN 3992 Personal Property Contract.

14. Burnham is also designated as an express third-party beneficiary under the Lease Agreements, entitled to enforce its rights under such agreements:

The Initiator shall be entitled to enforce its rights against the Lessee and Lessor under and in connection with this Clause 5.2 as a third party, notwithstanding that the Initiator is not a signatory to this Agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt, the Initiator shall have the right to bring a claim directly against the Lessee and/or the Guarantor for any Initiator Compensation and any other amounts payable to the Initiator that become due and unpaid under this Agreement, and such right shall not be reduced, diminished or otherwise affected in any respect detrimental to the Initiator as a result of Initiator not being a party to this Agreement. Any obligation in connection with Initiator's deficiency claim against the Lessee (or Guarantor) shall only be released upon actual receipt by Initiator of the relevant amounts. Any amounts payable by the Lessee to the Initiator in respect of such deficiency claim shall be paid by Lessee (or Guarantor) directly to the Initiator.

See e.g., Section 5.2(j) of that certain MSN 3992 Personal Property Contract.

15. As set forth below, the Claims are entitled to an administrative expense status under both Bankruptcy Code sections 365(d)(5) and 503(b).

B. Bankruptcy Code Section 365(d)(5)

16. Bankruptcy Code section 365(d)(5) obligates a debtor, after sixty days from its petition date, to "timely perform *all of the obligations*" on leases of personal property "until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title. . . ." Consequently, pursuant to Bankruptcy Code section 365(d)(5), an administrative claim arises with respect to all unperformed obligations accruing after the first sixty days of the bankruptcy case. And

administrative claims arising under a personal property lease under 365(d)(5) “are based upon the terms of the lease and not the benefit to the bankruptcy estate.” *In re Lakeshore Const. Co. of Wolfboro, Inc.*, 390 B.R. 751 (Bankr. D.N.H. 2008); *In re Wyoming Sand and Stone Co.*, 393 B.R. 359, 361 (M.D. Pa. 2008) (“Benefit to the estate is not an issue under § 365(d)(5), and, in the absence of intervening action by the Debtor, the obligation to perform under the lease remains.”).

17. Here, the applicable Lease Agreements obligate the payment of Burnham’s fees as “Additional Rent” and indisputably fall within the contractual obligations that give rise to an administrative expense claim under Bankruptcy Code section 365(d)(5). *Wyoming*, 393 B.R. at 361 (concluding that no showing of a benefit to the estate is required and “the Court has little discretion but to award [the applicable creditor] an allowance for that time period from the 60th day after filing until surrender of the equipment . . .”); *see also In re Hayes Lemmerz Int’l, Inc.*, 340 B.R. 461, 472 (Bankr. D. Del. 2006) (“Unlike parties claiming administrative expense status under section 503(b), lessors claiming under section 365(d)(10) need not prove they conferred any benefit upon the estate.”); *In re Glob. Container Lines Ltd.*, No. 09-78585 (AST), 2010 Bankr. LEXIS 5596, at \*8 (Bankr. E.D.N.Y. Feb. 25, 2010) (noting that section 365(d)(5) “expressly overrides Section 503(b)(1), again, unless the equities require otherwise,” requirement of showing a benefit to the estate).

18. Here, the sixtieth day from the Petition Date was July 9, 2020. The Rejection Orders are not yet effective, and will only become effective upon the Debtors entry into a new aircraft lease and new guarantee for each aircraft (the “**Rejection Date**”). Thus, Burnham’s Claims continue to accrue until such Rejection Date occurs.

19. Accordingly, for the foregoing reasons, Bankruptcy Code section 365(d)(5) requires the Debtors to pay Burnham administrative fees under the Contracts from the sixtieth day of these Chapter 11 Cases through the Rejection Date.

C. Section 503(b) of the Bankruptcy Code

20. In addition, Burnham is entitled to an administrative expense claim from the Petition Date through the Rejection Date pursuant to Bankruptcy Code section 503(b)(1). Bankruptcy Code section 503(b)(1) provides that the actual, necessary costs and expenses of preserving the Debtors' estate constitute administrative expenses, and that a party may file a request for payment of administrative expenses. 11 U.S.C. § 503(b)(1). Under section 503, the debtor must pay the counterparty to a lease agreement the reasonable administrative expense for the use of leased property that has benefited the bankruptcy estate. *See In re Patient Education Media, Inc.*, 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998); *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 531 (1984) ("If the debtor-in-possession elects to continue to receive benefits from the executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services . . ."). The Second Circuit has recognized the presumption that the payment terms of a lease are a reasonable measure of the administrative expenses to be paid by a debtor. *Farber v. Wards Co., Inc.*, 825 F.2d 684, 689-90 (2d Cir. 1987).

21. Here, the use of the leased aircraft pursuant to the terms of the Contracts by the Debtors after the commencement of the Chapter 11 Cases provided a clear and undisputed benefit to the Debtors' estate and Burnham's Claims arising under such Contracts constitutes an administrative expense claim allowable under Bankruptcy Code section 503(b).

D. Claims Amount

22. For the foregoing reasons, pursuant to Bankruptcy Code sections 365(d)(5) and 503(b)(1) the following amounts must be paid as administrative expenses as such obligations arise under the Contracts.

<b>Burnham Sterling &amp; Company LLC</b>				
<u>MSN</u>	<u>Currency</u>	<u>Description</u>	<u>(A)</u>	<u>(B)</u>
			5/10/2020 - 8/23/2021	Post-Petition Default Interest
6617	USD	2015 EAIV-1	\$24,206.50	\$1,193.83
6692	USD	2015 EAIV-1	\$29,056.60	\$1,469.91
6739	USD	2015 EAIV-1	\$29,056.60	\$1,452.58
37507	USD	2015 EAIV-1	\$77,130.60	\$3,795.60
6767	USD	2015 EAIV-2	\$34,056.35	\$1,689.76
6511	USD	2015 EAIV-2	\$34,056.35	\$1,665.61
37508	USD	2015 EAIV-2	\$77,130.60	\$3,848.91
6746	USD	2015 EAIV-2	\$29,056.60	\$1,443.92
37511	USD	2016 EAIV	\$170,625.00	\$10,244.79
7284	EUR	2016 EAIV	€55,039.15	€2,359.08
7318	EUR	2016 EAIV	€56,173.40	€2,407.70
39407	USD	2017 JOLCO	\$287,741.67	\$12,388.94
7887	USD	2017 JOLCO	\$171,855.01	\$7,177.71
7928	USD	2017 JOLCO	\$171,855.01	\$7,239.10
65315	USD	2018 JOLCO	\$232,560.00	\$8,677.12
8300	USD	2018 JOLCO	\$155,932.99	\$7,052.97
3988	USD	2019 JOLCO	\$81,879.80	\$1,949.62
3992	USD	2019 JOLCO	\$81,879.80	\$1,940.38
4281	USD	2019 JOLCO	\$69,502.09	\$2,878.03
4284	USD	2019 JOLCO	\$69,502.09	\$2,882.59
	<b>USD</b>	<b>Grand Total</b>	<b>\$1,827,083.66</b>	<b>\$78,991.37</b>
	<b>EUR</b>	<b>Grand Total</b>	<b>€111,212.55</b>	<b>€4,766.78</b>

**III. Reservation of Rights**

23. Right to Amend. Burnham expressly reserves the right to amend or supplement the Claims to correct, clarify, explain, expand, supplement or add to any portion of the Claims asserted herein, or otherwise, to both increase the dollar amounts of such Claims and provide additional information and documentation as is necessary to pursue these and such additional claims as are, or may be, held by Burnham, including, without limitation, the right to amend the Claims in the event an objection is made against any of the Claims or a claim is asserted against Burnham. Moreover, Burnham specifically reserves the right to conduct discovery with respect to this matter in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

24. No Admission. Nothing contained in the Claims shall be deemed an admission by Burnham. Burnham expressly reserves the right to withdraw the Claims as if it had never been filed.

25. Additional Reservations. In addition, the filing of these Claims is not intended, and shall not be deemed or construed as: (a) consent by Burnham to the jurisdiction of the Bankruptcy Court or any other court for any purpose other than with respect to issues directly related to the claims asserted in the Claims; (b) a waiver or release of any right of Burnham to have all disputes with the Debtor resolved through arbitration as may be provided in the documentation governing the Claims, notwithstanding whether or not such matters are designated as “core proceedings” pursuant to 28 U.S.C. § 157(b)(2); (c) consent by Burnham to a trial in the Bankruptcy Court or in any other court of any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise; (d) a waiver or release of the right of Burnham to have any and all final orders in any and all non-core matters



or proceedings entered only after de novo review by the United States District Court Judge; (e) a waiver or release of any right which Burnham may have to a jury trial; (f) a waiver of the right to move to withdraw the reference in respect of the subject matter of the Claims, any objection thereto or other proceeding which may be commenced in the Chapter 11 Cases against or otherwise involving Burnham; (g) an election of remedies; or (h) an admission of personal jurisdiction.

**IV. Notices Regarding the Claim**

26. All notices and correspondence with respect to the Claims (and, if filed, any objections thereto) must be sent to Burnham, and its counsel, at the following addresses:

BURNHAM STERLING AND COMPANY LLC  
29 River Road  
Suite 102  
Cos Cob, CT 06807

With a copy to:

Jason Kaplan  
Matthew Kremer  
O'MELVENY AND MYERS LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

Furthermore, designation of Jason Kaplan, Esq. and Matthew Kremer, Esq. of O'Melveny and Myers LLP ("**O'Melveny**") to receive all notices and correspondence related to the Claims shall not be construed as an appointment of Jason Kaplan, Esq., Matthew Kremer, Esq. and/or O'Melveny as authorized agents of Burnham, either expressly or impliedly, for purposes of receiving service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure made applicable pursuant to Federal Rules of Bankruptcy Procedure 7004 or other applicable law.

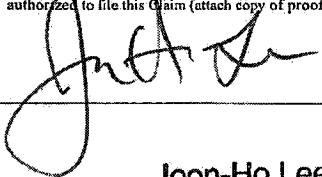
<b>UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</b>	<b>PROOF OF ADMINISTRATIVE CLAIM</b>
THIS FORM SHOULD NOT BE USED FOR CLAIMS EXCLUDED BY SAID NOTICE NOR SHOULD IT BE USED FOR ANY CLAIMS THAT ARE NOT OF A KIND AND ENTITLED TO PRIORITY IN ACCORDANCE WITH 11 U.S.C. §§ 503(b) AND 507(a)(2), IT SHOULD NOT BE USED BY ANY PERSON ASSERTING CLAIMS PURSUANT TO SECTION 503(B)(9) OF THE BANKRUPTCY CODE.	
Fill in this information to identify the case (Select only one Debtor per claim form):	
<input type="checkbox"/> Aero Transporte de Carga Unión, S.A. de C.V. (Case No. 20-11140)	<input type="checkbox"/> AeroInversiones de Honduras, S.A. (Case No. 20-11141)
<input type="checkbox"/> America Central Corp. (Case No. 20-11144)	<input type="checkbox"/> AV International Holdco S.A. (Case No. 20-11145)
<input type="checkbox"/> AV Investments One Colombia S.A.S. (Case No. 20-11135)	<input type="checkbox"/> AV Investments Two Colombia S.A.S. (Case No. 20-11136)
<input type="checkbox"/> Avianca Leasing, LLC (Case No. 20-11151)	<input type="checkbox"/> Avianca, Inc. (Case No. 20-11132)
<input type="checkbox"/> Avifreight Holding Mexico, S.A.P.I. de C.V. (Case No. 20-11155)	<input type="checkbox"/> C.R. International Enterprises, Inc. (Case No. 20-11156)
<input type="checkbox"/> Islaña de Inversiones, S.A. de C.V. (Case No. 20-11160)	<input type="checkbox"/> Latin Airways Corp. (Case No. 20-11161)
<input type="checkbox"/> Ronnair N.V. (Case No. 20-11164)	<input type="checkbox"/> Servicio Terrestre, Aéreo y Rampa S.A. (Case No. 20-11165)
<input type="checkbox"/> Taca International Airlines S.A. (Case No. 20-11168)	<input type="checkbox"/> Taca S.A. (Case No. 20-11169)
<input type="checkbox"/> Aviacorp Enterprises S.A. (Case No. 20-12256)	<input type="checkbox"/>
<input checked="" type="checkbox"/> Aerovías del Continente Americano S.A. Avianca (Case No. 20-11134)	<input type="checkbox"/> Airlease Holdings One Ltd (Case No. 20-11142)
<input type="checkbox"/> AV International Holdings S.A. (Case No. 20-11146)	<input type="checkbox"/> AV International Investments S.A. (Case No. 20-11147)
<input type="checkbox"/> AV Taca International Holdco S.A. (Case No. 20-11149)	<input type="checkbox"/> Avianca Costa Rica S.A. (Case No. 20-11150)
<input type="checkbox"/> Avianca-Ecuador S.A. (Case No. 20-11152)	<input type="checkbox"/> Aviaservicios, S.A. (Case No. 20-11153)
<input type="checkbox"/> Grupo Taca Holdings Limited (Case No. 20-11157)	<input type="checkbox"/> Aviateca, S.A. (Case No. 20-11154)
<input type="checkbox"/> Latin Logistics, LLC (Case No. 20-11162)	<input type="checkbox"/> Inversiones del Caribe, S.A. (Case No. 20-11159)
<input type="checkbox"/> Servicios Aeroportuarios Integrados SAI S.A.S. (Case No. 20-11138)	<input type="checkbox"/> International Trade Marks Agency Inc. (Case No. 20-11158)
<input type="checkbox"/> Tampa Cargo S.A.S. (Case No. 20-11139)	<input type="checkbox"/> Nicaragüense de Aviación, Sociedad Anónima (Case No. 20-11163)
<input type="checkbox"/>	<input type="checkbox"/> Regional Express Américas S.A.S. (Case No. 20-11137)
<input type="checkbox"/>	<input type="checkbox"/> Taca de Honduras, S.A. de C.V. (Case No. 20-11166)
<input type="checkbox"/>	<input type="checkbox"/> Taca de México, S.A. (Case No. 20-11167)
<input type="checkbox"/>	<input type="checkbox"/> Technical and Training Services, S.A. de C.V. (Case No. 20-11170)
<input type="checkbox"/>	<input type="checkbox"/> AV Loyalty Bermuda Ltd. (Case No. 20-12255)
<input type="checkbox"/>	<input type="checkbox"/>
Name of Creditor (The person or entity to whom the debtor owes money or property)  Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your administrative expense claim. Attach copy of statement giving particulars.
Name and Addresses Where Notices Should be Sent:  Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC 29 River Road Suite 102 Cos Cob, CT 06807	Name and Addresses Where Payment Should be Sent (if different):
1. BASIS FOR CLAIM: <input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Personal Injury/Wrongful Death <input type="checkbox"/> Wages (Dates): _____ <input type="checkbox"/> Money loaned <input type="checkbox"/> Taxes <input type="checkbox"/> Retiree Benefits as Defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Other (Specify): _____	Check here if this claim: <input type="checkbox"/> replaces or <input type="checkbox"/> amends a previously filed administrative expense claim.  Claim Number (if known):
2. DESCRIPTION OF CLAIM (IF KNOWN):    See Addendum	Dated:
3. TOTAL AMOUNT OF CLAIM:      \$ <u>See Addendum</u> (Total)	

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AUG 23 2021

KURTZMAN CARSON CONSULTANTS



<p>4. <b>CREDITS AND SETOFFS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p> <p>5. <b>SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. Do not send original documents. If the documents are not available, explain. If the documents are voluminous, attach a summary. The Debtors may request full copies of your supporting documentation to substantiate the claim.</p> <p>6. <b>TIME-STAMPED COPY:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>	<p>THIS SPACE IS FOR COURT USE ONLY</p>
<p>Date: August 23, 2021</p>	<p>Sign and print the name and title, if any, of the creditor or other person authorized to file this Claim (attach copy of proof of attorney, if any)</p> 

Joon-Ho Lee  
Authorized Signatory

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AUG 23 2021

KURTZMAN CARSON CONSULTANTS

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11133 (MG)  
(Jointly Administered)

ADDENDUM TO PROOF OF CLAIM OF  
BABCOCK & BROWN SECURITIES LLC

Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC (“**Babcock**”), an unregistered entity providing financial advisory services, asserts the following claims (the “**Claims**”) against Avianca Holdings S.A. and its debtor-affiliates (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), and respectfully states as follows:

**I. Background**

1. Commencement of the Chapter 11 Cases. On May 10, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); AeroInversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00- 1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47- 2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. 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.

Code, as amended (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

2. Debtors-in-Possession. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108.

3. Joint Administration. The Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered under case number 20-11133 (MG).

4. Bar Date. On October 29, 2020, the Debtors filed the *Notice of Debtors’ Application for an Order (I) Establishing Bar Dates for Filing Proofs of Claim; (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures; (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims; (IV) Providing Certain Supplemental Relief* [Docket No. 1138] (the “**Bar Date Motion**”). On November 16, 2020, the Bankruptcy Court granted the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures, (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims, and (IV) Providing Certain Supplemental Relief* [Docket No. 1180] approving the relief sought in the Bar Date Motion and establishing January 20, 2021 at 11:59 p.m. (PT) as the bar date for filing proofs of claims in the Chapter 11 Cases for general creditors (the “**Bar Date**”). On January 20, 2021, Babcock timely filed proof of claim number 2057 by the Bar Date (the “**Prepetition Claims**”). The filing of these Claims is not intended to, and does not, amend the Prepetition Claims filed by Babcock.

5. Rejection Orders. To date, the Bankruptcy Court has entered six orders that impact Babcock (each, a “**Rejection Order**” and collectively, the “**Rejection Orders**”), which include:

- *Order Authorizing the Debtors to (I) Enter into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company*

*(MSN 7928) and Certain Related Agreements* [Docket No. 1929], as subsequently modified by the *Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and (II) Reject Pre-Petition Aircraft Lease (MSN 8300) and Certain Related Agreements*, [Docket No. 2002];

- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIIV 2016 (MSNs 7284 and 7318) and Certain Related Agreements* [Docket No. 2004];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIIV 2015 (MSNs 6511, 6617, 6692, 6739, 6746, and 6767)* [Docket No. 2015];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 4281 and 4284) and Certain Related Agreements* [Docket No. 2016]; and
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 3988 and 3992) and Certain Related Agreements* [Docket No. 2017].

6. Pursuant to the Rejection Orders, Babcock has thirty days from the date of each Rejection Order to file a new claim or amend a previously filed claim against any of the Debtors, for “damages based upon or resulting from the assumption, rejection or amendment of any unexpired leases or subleases related to each of the transactions.” Babcock does not believe that the thirty day deadline imposed by the Rejection Orders applies to the filing of administrative expense claims—which are not claims currently subject to any bar date and do not arise from the rejection of the applicable agreements. However, for the avoidance of doubt, Babcock has complied with such 30 day deadline, but reserves all rights to amend, supplement, or modify these Claims.

7. Necessity of Addendum. This addendum is annexed to the official administrative proof of claim form that set forth a summary of Babcock’s Claims against the Debtors. This addendum provides the parties in interest with relevant information and a description of the Claim.

8. Supporting Documentation. The documentation supporting these Claims are voluminous and may already be in the Debtors' possession. Nonetheless, such documentation is available upon request.

## II. The Claims

### A. The Personal Property Leases

9. The Debtors began contracting with Babcock in 2014 to arrange the financing and leasing of certain aircraft in exchange for certain fees (such services the "**Initiator Services**" and such fees the "**Initiator Fees**").

10. Babcock has not been paid the Initiator Fees for the Initiator Services the Debtors benefited from since the Petition Date.

11. As a result, Babcock files these Claims asserting any and all of its rights to Initiator Fees and other fees, remedies, damages, indemnities, and other claims (including contingent or unliquidated claims) against the Debtors arising on or after the Petition Date under, related to, or due under the following contracts (the "**Contracts**" together with the guarantees, lease agreements, sublease agreements, and any and all other related agreements, amendments or supplements thereto or modifications thereof, and any additional documents, agreements or instruments delivered in connection with any such related agreement, amendment, supplement or modification):

That certain Framework Agreement, dated as of July 30, 2015, among Avianca EAIV 2015-1 Trust and Avianca EAIV 2015-2 Trust, as Borrowers, Octo-Aircraft Leasing LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the purchasers identified on Schedule I thereto, Wells Fargo Bank, National Association, as Security Trustee, with Babcock & Brown Securities LLC f/k/a Burnham Sterling Securities LLC and Burnham Sterling & Company LLC as Initiators (the "**2015 EAIV Financing**").

12. The Contracts provide that the Debtors have an unconditional obligation to pay Babcock (which is referred to as the “Initiator” in the relevant agreements) its compensation through the payment of the Initiator Fee on a schedule set forth in Contracts.

the Owner agrees to pay to the Security Trustee, for account of the Initiator, as and when due, the Initiator Fee.

*See e.g.*, Section 12.15 of that certain Omnibus Amendment No. 1, dated July 30, 2015 of that certain Note Purchase Agreement [Avianca EAIIV 2015-1 Trust], dated July 30, 2015, between Wells Fargo Bank Northwest, National Association, as Owner, Avianca Holdings S.A., as Guarantor, and Aerovías Del Continente Americano S.A., as Lessee (the “**2015 EAIIV Personal Property Trust Amendment**”).

13. Babcock is designated as an express third-party beneficiary under the Contracts entitled to enforce its rights under such agreements:

The Initiator shall be an express third party beneficiary of (i) the provisions of this Agreement and any other Basic Document that relate to the obligation of the Obligors to pay and the time and manner of payment of the Initiator Fee, any applicable Accelerated Initiator Fee and any applicable Initiator Prepayment Fee (including, without limitation, the obligation of the Lessee under the Lease and/or the Guarantor under the Guaranty, as the case may be, to pay the Initiator Fee, any applicable Accelerated Initiator Fee and any applicable Initiator Prepayment Fee as Supplemental Rent) . . . .

*See e.g.*, Section 12.15 of that certain 2015 EAIIV Personal Property Trust Amendment.

14. As set forth below, these Claims are entitled to an administrative expense status under both Bankruptcy Code sections 365(d)(5) and 503(b).

B. Bankruptcy Code Section 365(d)(5)

15. Bankruptcy Code section 365(d)(5) obligates a debtor, after sixty days from its petition date, to “timely perform *all of the obligations*” on leases of personal property “until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title. . . .” Consequently,



pursuant to Bankruptcy Code section 365(d)(5), an administrative claim arises with respect to all unperformed obligations accruing after the first sixty days of the bankruptcy case. And administrative claims arising under a personal property lease under 365(d)(5) “are based upon the terms of the lease and not the benefit to the bankruptcy estate.” *In re Lakeshore Const. Co. of Wolfboro, Inc.*, 390 B.R. 751 (Bankr. D.N.H. 2008); *In re Wyoming Sand and Stone Co.*, 393 B.R. 359, 361 (M.D. Pa. 2008) (“Benefit to the estate is not an issue under § 365(d)(5), and, in the absence of intervening action by the Debtor, the obligation to perform under the lease remains.”).

16. Here, the applicable Contracts obligate the payment of Babcock’s fees and indisputably fall within the contractual obligations that give rise to an administrative expense claim under Bankruptcy Code section 365(d)(5). *Wyoming*, 393 B.R. at 361 (concluding that no showing of a benefit to the estate is required and “the Court has little discretion but to award [the applicable creditor] an allowance for that time period from the 60th day after filing until surrender of the equipment . . .”); *see also In re Hayes Lemmerz Int’l, Inc.*, 340 B.R. 461, 472 (Bankr. D. Del. 2006) (“Unlike parties claiming administrative expense status under section 503(b), lessors claiming under section 365(d)(10) need not prove they conferred any benefit upon the estate.”); *In re Glob. Container Lines Ltd.*, No. 09-78585 (AST), 2010 Bankr. LEXIS 5596, at \*8 (Bankr. E.D.N.Y. Feb. 25, 2010) (noting that section 365(d)(5) “expressly overrides Section 503(b)(1), again, unless the equities require otherwise,” requirement of showing a benefit to the estate).

17. Here, the sixtieth day from the Petition Date was July 9, 2020. The Rejection Orders are not yet effective, and will only become effective upon the Debtors entry into a new aircraft lease and new guarantee for each aircraft (the “**Rejection Date**”). Thus, Babcock’s Claims continue to accrue until such Rejection Date occurs.

18. Accordingly, for the foregoing reasons, Bankruptcy Code section 365(d)(5) requires the Debtors to pay Babcock administrative fees under the Contracts from the sixtieth day of these Chapter 11 Cases through the Rejection Date.

C. Section 503(b) of the Bankruptcy Code

19. In addition, Babcock is entitled to an administrative expense claim from the Petition Date through the Rejection Date pursuant to Bankruptcy Code section 503(b)(1). Bankruptcy Code section 503(b)(1) provides that the actual, necessary costs and expenses of preserving the Debtors' estate constitute administrative expenses, and that a party may file a request for payment of administrative expenses. 11 U.S.C. § 503(b)(1). Under section 503, the debtor must pay the counterparty to a lease agreement the reasonable administrative expense for the use of leased property that has benefited the bankruptcy estate. *See In re Patient Education Media, Inc.*, 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998); *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 531 (1984) ("If the debtor-in-possession elects to continue to receive benefits from the executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services . . . ."). The Second Circuit has recognized the presumption that the payment terms of a lease are a reasonable measure of the administrative expenses to be paid by a debtor. *Farber v. Wards Co., Inc.*, 825 F.2d 684, 689-90 (2d Cir. 1987).

20. Here, the use of the leased aircraft pursuant to the terms of the Contracts by the Debtors after the commencement of the Chapter 11 Cases provided a clear and undisputed benefit to the Debtors' estate and Babcock's Claims arising under such Contracts constitutes an administrative expense claim allowable under Bankruptcy Code section 503(b).

D. Claims Amount

21. For the foregoing reasons, pursuant to Bankruptcy Code sections 365(d)(5) and 503(b)(1) the following amounts must be paid as administrative expenses as such obligations arise under the Contracts.

<b>Babcock &amp; Brown Securities LLC</b>				
<b><u>MSN</u></b>	<b><u>Currency</u></b>	<b><u>Description</u></b>	<b><u>(A)</u></b>	<b><u>(B)</u></b>
			5/10/2020 - 8/23/2021	Post-Petition Default Interest
6617	USD	2015 EAIV-1	\$27,356.00	\$1,374.44
6692	USD	2015 EAIV-1	\$32,837.15	\$3,211.31
6739	USD	2015 EAIV-1	\$32,837.15	\$1,686.25
37507	USD	2015 EAIV-1	\$87,166.30	\$4,363.88
6767	USD	2015 EAIV-2	\$38,487.40	\$1,952.62
6511	USD	2015 EAIV-2	\$38,487.40	\$1,907.63
37508	USD	2015 EAIV-2	\$87,166.30	\$4,463.17
6746	USD	2015 EAIV-2	\$32,837.15	\$1,670.11
	<b>USD</b>	<b>Grand Total</b>	<b>\$377,174.85</b>	<b>\$20,629.40</b>

III. Reservation of Rights

22. Right to Amend. Babcock expressly reserves the right to amend or supplement the Claims to correct, clarify, explain, expand, supplement or add to any portion of the Claims asserted herein, or otherwise, to both increase the dollar amounts of such Claims and provide additional information and documentation as is necessary to pursue these and such additional claims as are, or may be, held by Babcock, including, without limitation, the right to amend the Claims in the event an objection is made against any of the Claims or a claim is asserted against Babcock. Moreover, Babcock specifically reserves the right to conduct discovery with respect to

this matter in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

23. No Admission. Nothing contained in these Claims shall be deemed an admission by Babcock. Babcock expressly reserves the right to withdraw the Claims as if it had never been filed.

24. Additional Reservations. In addition, the filing of these Claims is not intended, and shall not be deemed or construed as: (a) consent by Babcock to the jurisdiction of the Bankruptcy Court or any other court for any purpose other than with respect to issues directly related to the Claims asserted in the Claims; (b) a waiver or release of any right of Babcock to have all disputes with the Debtor resolved through arbitration as may be provided in the documentation governing the Claims, notwithstanding whether or not such matters are designated as “core proceedings” pursuant to 28 U.S.C. § 157(b)(2); (c) consent by Babcock to a trial in the Bankruptcy Court or in any other court of any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise; (d) a waiver or release of the right of Babcock to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by the United States District Court Judge; (e) a waiver or release of any right which Babcock may have to a jury trial; (f) a waiver of the right to move to withdraw the reference in respect of the subject matter of these Claims, any objection thereto or other proceeding which may be commenced in the Chapter 11 Cases against or otherwise involving Babcock; (g) an election of remedies; or (h) an admission of personal jurisdiction.

**IV. Notices Regarding the Claim**

25. All notices and correspondence with respect to the Claims (and, if filed, any objections thereto) must be sent to Babcock, and its counsel, at the following addresses:

BABCOCK & BROWN SECURITIES LLC  
29 River Road  
Suite 102  
Cos Cob, CT 06807

With a copy to:

Jason Kaplan  
Matthew Kremer  
O'MELVENY AND MYERS LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

Furthermore, designation of Jason Kaplan, Esq. and Matthew Kremer, Esq. of O'Melveny and Myers LLP ("O'Melveny") to receive all notices and correspondence related to the Claims shall not be construed as an appointment of Jason Kaplan, Esq., Matthew Kremer, Esq. and/or O'Melveny as authorized agents of Babcock, either expressly or impliedly, for purposes of receiving service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure made applicable pursuant to Federal Rules of Bankruptcy Procedure 7004 or other applicable law.

<b>UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</b>	<b>PROOF OF ADMINISTRATIVE CLAIM</b>			
THIS FORM SHOULD NOT BE USED FOR CLAIMS EXCLUDED BY SAID NOTICE NOR SHOULD IT BE USED FOR ANY CLAIMS THAT ARE NOT OF A KIND AND ENTITLED TO PRIORITY IN ACCORDANCE WITH 11 U.S.C. §§ 503(b) AND 507(a)(2). IT SHOULD NOT BE USED BY ANY PERSON ASSERTING CLAIMS PURSUANT TO SECTION 503(B)(9) OF THE BANKRUPTCY CODE.				
Fill in this information to identify the case (Select only one Debtor per claim form):				
<input type="checkbox"/> Aero Transporte de Carga Unión, S.A. de C.V. (Case No. 20-11140)	<input type="checkbox"/> AeroInversiones de Honduras, S.A. (Case No. 20-11141)	<input checked="" type="checkbox"/> Aerovías del Continente Americano S.A. Avianca (Case No. 20-11134)	<input type="checkbox"/> Airlease Holdings One Ltd. (Case No. 20-11142)	<input type="checkbox"/> America Central (Canada) Corp. (Case No. 20-11143)
<input type="checkbox"/> America Central Corp. (Case No. 20-11144)	<input type="checkbox"/> AV International Holdeco S.A. (Case No. 20-11145)	<input type="checkbox"/> AV International Holdings S.A. (Case No. 20-11146)	<input type="checkbox"/> AV International Investments S.A. (Case No. 20-11147)	<input type="checkbox"/> AV International Ventures S.A. (Case No. 20-11148)
<input type="checkbox"/> AV Investments One Colombia S.A.S. (Case No. 20-11135)	<input type="checkbox"/> AV Investments Two Colombia S.A.S. (Case No. 20-11136)	<input type="checkbox"/> AV Taca International Holdco S.A. (Case No. 20-11149)	<input type="checkbox"/> Avianca Costa Rica S.A. (Case No. 20-11150)	<input type="checkbox"/> Avianca Holdings S.A. (Case No. 11133)
<input type="checkbox"/> Avianca Leasing, LLC (Case No. 20-11151)	<input type="checkbox"/> Avianca, Inc. (Case No. 20-11132)	<input type="checkbox"/> Avianca-Ecuador S.A. (Case No. 20-11152)	<input type="checkbox"/> Aviaservicios, S.A. (Case No. 20-11153)	<input type="checkbox"/> Aviateca, S.A. (Case No. 20-11154)
<input type="checkbox"/> Avifreight Holding Mexico, S.A.P.I. de C.V. (Case No. 20-11155)	<input type="checkbox"/> C.R. International Enterprises, Inc. (Case No. 20-11156)	<input type="checkbox"/> Grupo Taca Holdings Limited (Case No. 20-11157)	<input type="checkbox"/> International Trade Marks Agency Inc. (Case No. 20-11158)	<input type="checkbox"/> Inversiones del Caribe, S.A. (Case No. 20-11159)
<input type="checkbox"/> Islaña de Inversiones, S.A. de C.V. (Case No. 20-11160)	<input type="checkbox"/> Latin Airways Corp. (Case No. 20-11161)	<input type="checkbox"/> Latin Logistics, LLC (Case No. 20-11162)	<input type="checkbox"/> Nicaragüense de Aviación, Sociedad Anónima (Case No. 20-11163)	<input type="checkbox"/> Regional Express Américas S.A.S. (Case No. 20-11137)
<input type="checkbox"/> Ronair N.V. (Case No. 20-11164)	<input type="checkbox"/> Servicio Terrestre, Aéreo y Ranpa S.A. (Case No. 20-11165)	<input type="checkbox"/> Servicios Aeroportuarios Integrados SAI S.A.S. (Case No. 20-11138)	<input type="checkbox"/> Taca de Honduras, S.A. de C.V. (Case No. 20-11166)	<input type="checkbox"/> Taca de México, S.A. (Case No. 20-11167)
<input type="checkbox"/> Taca International Airlines S.A. (Case No. 20-11168)	<input type="checkbox"/> Taca S.A. (Case No. 20-11169)	<input type="checkbox"/> Tampa Cargo S.A.S. (Case No. 20-11139)	<input type="checkbox"/> Technical and Training Services, S.A. de C.V. (Case No. 20-11170)	<input type="checkbox"/> AV Loyalty Bermuda Ltd. (Case No. 20-12255)
<input type="checkbox"/> Aviacorp Enterprises, S.A. (Case No. 20-12256)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name of Creditor (The person or entity to whom the debtor owes money or property)  Burnham Sterling and Company LLC		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your administrative expense claim. Attach copy of statement giving particulars.		Check here if this claim: <input type="checkbox"/> replaces or <input type="checkbox"/> amends a previously filed administrative expense claim.
Name and Addresses Where Notices Should be Sent:  Burnham Sterling and Company LLC 29 River Road Suite 102 Cos Cob, CT 06807		Name and Addresses Where Payment Should be Sent (if different):		
1. BASIS FOR CLAIM: <input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Personal Injury/Wrongful Death <input type="checkbox"/> Wages (Dates): _____ <input type="checkbox"/> Money loaned <input type="checkbox"/> Taxes <input type="checkbox"/> Retiree Benefits as Defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Other (Specify): _____				
2. DESCRIPTION OF CLAIM (IF KNOWN):      See Addendum				
3. TOTAL AMOUNT OF CLAIM:      \$ <u>See Addendum</u> (Total)				

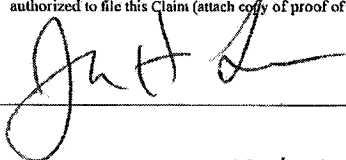
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AUG 23 2021

**KURTZMAN CARSON CONSULTANTS**



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<p>4. <b>CREDITS AND SETOFFS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p> <p>5. <b>SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. Do not send original documents. If the documents are not available, explain. If the documents are voluminous, attach a summary. The Debtors may request full copies of your supporting documentation to substantiate the claim.</p> <p>6. <b>TIME-STAMPED COPY:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>	<p>THIS SPACE IS FOR COURT USE ONLY</p>
<p>Date: August 23, 2021</p>	<p>Sign and print the name and title, if any, of the creditor or other person authorized to file this Claim (attach copy of proof of attorney, if any)</p> 

Joon-Ho Lee  
Authorized Signatory

**RECEIVED**

AUG 23 2021

**KURTZMAN CARSON CONSULTANTS**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11133 (MG)  
(Jointly Administered)

ADDENDUM TO PROOF OF CLAIM OF  
BURNHAM STERLING AND COMPANY LLC

Burnham Sterling and Company LLC (“**Burnham**”), an unregistered entity providing financial advisory services, asserts the following claims (the “**Claims**”) against Avianca Holdings S.A. and its debtor-affiliates (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), and respectfully states as follows:

**I. Background**

1. Commencement of the Chapter 11 Cases. On May 10, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States

<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00- 1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47- 2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. 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.



Code, as amended (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

2. Debtors-in-Possession. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108.

3. Joint Administration. The Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered under case number 20-11133 (MG).

4. Bar Date. On October 29, 2020, the Debtors filed the *Notice of Debtors’ Application for an Order (I) Establishing Bar Dates for Filing Proofs of Claim; (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures; (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims; (IV) Providing Certain Supplemental Relief* [Docket No. 1138] (the “**Bar Date Motion**”). On November 16, 2020, the Bankruptcy Court granted the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures, (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims, and (IV) Providing Certain Supplemental Relief* [Docket No. 1180] approving the relief sought in the Bar Date Motion and establishing January 20, 2021 at 11:59 p.m. (PT) as the bar date for filing proofs of claims in the Chapter 11 Cases for general creditors (the “**Bar Date**”). On January 20, 2021, Burnham timely filed proof of claim number 2055 by the Bar Date (the “**Prepetition Claims**”). The filing of these Claims is not intended to, and does not, amend the Prepetition Claims filed by Burnham.

5. Rejection Orders. To date, the Bankruptcy Court has entered six orders that impact Burnham (each, a “**Rejection Order**” and collectively, the “**Rejection Orders**”), which include:

- *Order Authorizing the Debtors to (I) Enter into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company*

*(MSN 7928) and Certain Related Agreements* [Docket No. 1929], as subsequently modified by the *Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and (II) Reject Pre-Petition Aircraft Lease (MSN 8300) and Certain Related Agreements*, [Docket No. 2002];

- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2016 (MSNs 7284 and 7318) and Certain Related Agreements* [Docket No. 2004];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIV 2015 (MSNs 6511, 6617, 6692, 6739, 6746, and 6767)* [Docket No. 2015];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 4281 and 4284) and Certain Related Agreements* [Docket No. 2016]; and
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 3988 and 3992) and Certain Related Agreements* [Docket No. 2017].

6. Pursuant to the Rejection Orders, Burnham has thirty days from the date of each Rejection Order to file a new claim or amend a previously filed claim against any of the Debtors, for “damages based upon or resulting from the assumption, rejection or amendment of any unexpired leases or subleases related to each of the transactions.” Burnham does not believe that the thirty day deadline imposed by the Rejection Orders applies to the filing of administrative expense claims—which are not claims currently subject to any bar date and do not arise from the rejection of the applicable agreements. However, for the avoidance of doubt, Burnham has complied with such 30 day deadline, but reserves all rights to amend, supplement, or modify these Claims.

7. Necessity of Addendum. This addendum is annexed to the official administrative proof of claim form that set forth a summary of Burnham’s Claims against the Debtors. This addendum provides the parties in interest with relevant information and a description of the Claims.

8. Supporting Documentation. The documentation supporting these Claims are voluminous and may already be in the Debtors' possession.

## II. The Claims

### A. The Personal Property Leases

9. The Debtors began contracting with Burnham in 2014 to arrange the financing and leasing of certain aircraft in exchange for certain fees (such services the "**Initiator Services**" and such fees the "**Initiator Fees**").

10. Burnham has not been paid the Initiator Fees for the Initiator Services the Debtors benefited from since the Petition Date.

11. As a result, Burnham files these Claims asserting any and all of its rights to Initiator Fees and other fees, remedies, damages, indemnities, and other claims (including contingent or unliquidated claims) against the Debtors arising on or after the Petition Date under, related to, or due under the following contracts (the "**Contracts**" together with the guarantees, Lease Agreements (as defined below), and any and all other related agreements, amendments or supplements thereto or modifications thereof, and any additional documents, agreements or instruments delivered in connection with any such related agreement, amendment, supplement or modification):

- That certain Framework Agreement, dated as of July 30, 2015, among Avianca EAIV 2015-1 Trust and Avianca EAIV 2015-2 Trust, as Borrowers, Octo-Aircraft Leasing LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the purchasers identified on Schedule I thereto, Wells Fargo Bank, National Association, as Security Trustee, with Babcock & Brown Securities LLC f/k/a Burnham Sterling Securities LLC and Burnham Sterling & Company LLC as Initiators (the "**2015 EAIV Financing**");
- That certain Loan Agreement, dated as of December 14, 2016, among Avianca EAIV 2016-3 Trust, as Borrower, Uni-Aircraft Leasing LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the lenders identified on Schedule I thereto, and Wilmington Trust Company, as Security Trustee, with Burnham Sterling & Company LLC as Initiator (the "**37511 Financing**");

- That certain Loan Agreement, dated as of August 24, 2016, among Avianca EAIV 2016-1 Trust, as Borrower, Tri-Aircraft Leasing II LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the lenders identified on Schedule I thereto, and Wilmington Trust Company, as Security Trustee, with Burnham Sterling & Company LLC as Initiator (the “**7284 Financing**”);
- That certain Loan Agreement, dated as of October 14, 2016, among Avianca EAIV 2016-1 Trust, as Borrower, Tri-Aircraft Leasing II LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the lenders identified on Schedule I thereto, and Wilmington Trust Company, as Security Trustee, with Burnham Sterling & Company LLC as Initiator (the “**7318 Financing**”);
- That certain Loan Facility Agreement, dated as of October 26, 2017, among FLIP No. 168 Co., Ltd. & FLIP No. 169 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as the Original Lenders, Sumitomo Mitsui Banking Corporation, New York Branch, as Facility Agent, and Wilmington Trust, National Association, as Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**39407 Financing**”);
- That certain Loan Facility Agreement, dated November 30, 2017, among San Agustin Leasing Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Sumitomo Mitsui Banking Corporation, New York Branch, as Facility Agent and Security Agent, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**7887 Financing**”);
- That certain Loan Facility Agreement, dated December 4, 2017, among Los Katios Leasing Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Sumitomo Mitsui Banking Corporation, New York Branch, as Facility Agent and Security Agent, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**7928 Financing**”);
- That certain ECA Loan Agreement, dated September 25, 2018, among Malpelo Leasing Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original ECA Lenders, ING Capital LLC, as ECA Facility Agent, and Wilmington Trust SP Services (Dublin) Limited, as Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**65315 Financing**”);
- That certain Loan Facility Agreement, dated July 24, 2018, among Condor Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Bank of Utah, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**8300 Financing**”);
- That certain Loan Facility Agreement, dated April 24, 2019, among JPA No. 151 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Woori Bank, Tokyo Branch, as Facility Agent and Security Trustee, with

Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**3988 Financing**”);

- That certain Loan Facility Agreement, dated April 25, 2019, among JPA No. 152 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Woori Bank, Tokyo Branch, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**3992 Financing**”);
- That certain Loan Facility Agreement, dated April 23, 2019, among JPA No. 159 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Wilmington Trust Company, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**4281 Financing**”); and
- That certain Loan Facility Agreement, dated April 24, 2019, among JPA No. 160 Co., Ltd., as Borrower, the financial institutions listed on Schedule I thereto, as Original Lenders, and Wilmington Trust Company, as Facility Agent and Security Trustee, with Burnham Sterling & Company LLC as Initiator and Avianca Holdings S.A. as Guarantor (the “**4284 Financing**”).

12. The Contracts provide that the Debtors have an unconditional obligation to pay Burnham (which is referred to as the “Initiator” in the relevant agreements), Burnham’s compensation (*i.e.*, the “Initiator Compensation”) through the payment of “Additional Rental Payments” on a schedule set forth in the various lease agreements entered into by the Debtors (each applicable lease agreement or sublease agreement, the “**Lease Agreements**”):

The Lessee shall on each Additional Rental Payment Date pay to the Lessor at the Initiator Account, by way of additional rental payment, instalments of the Initiator Compensation . . . . The Sub-Lessee acknowledges that the Initiator has already provided services prior to the Delivery Date, and accordingly agrees that the Sub-Lessee’s obligations to pay the Initiator Fees hereunder are unconditional.

*See e.g.*, Section 5.2 of that certain Amended and Restated Aircraft Lease Agreement (MSN 3992), dated April 25, 2019, between Aircol 7, as Lessor, and Aerovías Del Continente Americano S.A., as Lessee (the “**MSN 3992 Personal Property Contract**”).

13. Burnham is expressly authorized to enforce its right to payment under the Lease Agreements against the Debtors:

The agreement as to the payment of the Initiator Compensation under this Lease is a bilateral matter as between the Lessee and the Initiator, and no consent or act is required by the Lessor for the Initiator to enforce its rights hereunder, or for the Lessee and the Initiator to agree any amendment or variation of any payment of Initiator Compensation.

*See* Section 5.2(f) of that certain MSN 3992 Personal Property Contract.

14. Burnham is also designated as an express third-party beneficiary under the Lease

Agreements, entitled to enforce its rights under such agreements:

The Initiator shall be entitled to enforce its rights against the Lessee and Lessor under and in connection with this Clause 5.2 as a third party, notwithstanding that the Initiator is not a signatory to this Agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt, the Initiator shall have the right to bring a claim directly against the Lessee and/or the Guarantor for any Initiator Compensation and any other amounts payable to the Initiator that become due and unpaid under this Agreement, and such right shall not be reduced, diminished or otherwise affected in any respect detrimental to the Initiator as a result of Initiator not being a party to this Agreement. Any obligation in connection with Initiator's deficiency claim against the Lessee (or Guarantor) shall only be released upon actual receipt by Initiator of the relevant amounts. Any amounts payable by the Lessee to the Initiator in respect of such deficiency claim shall be paid by Lessee (or Guarantor) directly to the Initiator.

*See e.g.*, Section 5.2(j) of that certain MSN 3992 Personal Property Contract.

15. As set forth below, the Claims are entitled to an administrative expense status under both Bankruptcy Code sections 365(d)(5) and 503(b).

B. Bankruptcy Code Section 365(d)(5)

16. Bankruptcy Code section 365(d)(5) obligates a debtor, after sixty days from its petition date, to "timely perform **all of the obligations**" on leases of personal property "until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title. . . ." Consequently, pursuant to Bankruptcy Code section 365(d)(5), an administrative claim arises with respect to all unperformed obligations accruing after the first sixty days of the bankruptcy case. And

administrative claims arising under a personal property lease under 365(d)(5) “are based upon the terms of the lease and not the benefit to the bankruptcy estate.” *In re Lakeshore Const. Co. of Wolfboro, Inc.*, 390 B.R. 751 (Bankr. D.N.H. 2008); *In re Wyoming Sand and Stone Co.*, 393 B.R. 359, 361 (M.D. Pa. 2008) (“Benefit to the estate is not an issue under § 365(d)(5), and, in the absence of intervening action by the Debtor, the obligation to perform under the lease remains.”).

17. Here, the applicable Lease Agreements obligate the payment of Burnham’s fees as “Additional Rent” and indisputably fall within the contractual obligations that give rise to an administrative expense claim under Bankruptcy Code section 365(d)(5). *Wyoming*, 393 B.R. at 361 (concluding that no showing of a benefit to the estate is required and “the Court has little discretion but to award [the applicable creditor] an allowance for that time period from the 60th day after filing until surrender of the equipment . . .”); *see also In re Hayes Lemmerz Int’l, Inc.*, 340 B.R. 461, 472 (Bankr. D. Del. 2006) (“Unlike parties claiming administrative expense status under section 503(b), lessors claiming under section 365(d)(10) need not prove they conferred any benefit upon the estate.”); *In re Glob. Container Lines Ltd.*, No. 09-78585 (AST), 2010 Bankr. LEXIS 5596, at \*8 (Bankr. E.D.N.Y. Feb. 25, 2010) (noting that section 365(d)(5) “expressly overrides Section 503(b)(1), again, unless the equities require otherwise,” requirement of showing a benefit to the estate).

18. Here, the sixtieth day from the Petition Date was July 9, 2020. The Rejection Orders are not yet effective, and will only become effective upon the Debtors entry into a new aircraft lease and new guarantee for each aircraft (the “**Rejection Date**”). Thus, Burnham’s Claims continue to accrue until such Rejection Date occurs.

19. Accordingly, for the foregoing reasons, Bankruptcy Code section 365(d)(5) requires the Debtors to pay Burnham administrative fees under the Contracts from the sixtieth day of these Chapter 11 Cases through the Rejection Date.

C. Section 503(b) of the Bankruptcy Code

20. In addition, Burnham is entitled to an administrative expense claim from the Petition Date through the Rejection Date pursuant to Bankruptcy Code section 503(b)(1). Bankruptcy Code section 503(b)(1) provides that the actual, necessary costs and expenses of preserving the Debtors' estate constitute administrative expenses, and that a party may file a request for payment of administrative expenses. 11 U.S.C. § 503(b)(1). Under section 503, the debtor must pay the counterparty to a lease agreement the reasonable administrative expense for the use of leased property that has benefited the bankruptcy estate. *See In re Patient Education Media, Inc.*, 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998); *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 531 (1984) ("If the debtor-in-possession elects to continue to receive benefits from the executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services . . ."). The Second Circuit has recognized the presumption that the payment terms of a lease are a reasonable measure of the administrative expenses to be paid by a debtor. *Farber v. Wards Co., Inc.*, 825 F.2d 684, 689-90 (2d Cir. 1987).

21. Here, the use of the leased aircraft pursuant to the terms of the Contracts by the Debtors after the commencement of the Chapter 11 Cases provided a clear and undisputed benefit to the Debtors' estate and Burnham's Claims arising under such Contracts constitutes an administrative expense claim allowable under Bankruptcy Code section 503(b).



D. Claims Amount

22. For the foregoing reasons, pursuant to Bankruptcy Code sections 365(d)(5) and 503(b)(1) the following amounts must be paid as administrative expenses as such obligations arise under the Contracts.

<b>Burnham Sterling &amp; Company LLC</b>				
<b>MSN</b>	<b>Currency</b>	<b>Description</b>	<b>(A)</b>	<b>(B)</b>
			5/10/2020 - 8/23/2021	Post-Petition Default Interest
6617	USD	2015 EAIV-1	\$24,206.50	\$1,193.83
6692	USD	2015 EAIV-1	\$29,056.60	\$1,469.91
6739	USD	2015 EAIV-1	\$29,056.60	\$1,452.58
37507	USD	2015 EAIV-1	\$77,130.60	\$3,795.60
6767	USD	2015 EAIV-2	\$34,056.35	\$1,689.76
6511	USD	2015 EAIV-2	\$34,056.35	\$1,665.61
37508	USD	2015 EAIV-2	\$77,130.60	\$3,848.91
6746	USD	2015 EAIV-2	\$29,056.60	\$1,443.92
37511	USD	2016 EAIV	\$170,625.00	\$10,244.79
7284	EUR	2016 EAIV	€55,039.15	€2,359.08
7318	EUR	2016 EAIV	€56,173.40	€2,407.70
39407	USD	2017 JOLCO	\$287,741.67	\$12,388.94
7887	USD	2017 JOLCO	\$171,855.01	\$7,177.71
7928	USD	2017 JOLCO	\$171,855.01	\$7,239.10
65315	USD	2018 JOLCO	\$232,560.00	\$8,677.12
8300	USD	2018 JOLCO	\$155,932.99	\$7,052.97
3988	USD	2019 JOLCO	\$81,879.80	\$1,949.62
3992	USD	2019 JOLCO	\$81,879.80	\$1,940.38
4281	USD	2019 JOLCO	\$69,502.09	\$2,878.03
4284	USD	2019 JOLCO	\$69,502.09	\$2,882.59
	<b>USD</b>	<b>Grand Total</b>	<b>\$1,827,083.66</b>	<b>\$78,991.37</b>
	<b>EUR</b>	<b>Grand Total</b>	<b>€111,212.55</b>	<b>€4,766.78</b>

**III. Reservation of Rights**

23. Right to Amend. Burnham expressly reserves the right to amend or supplement the Claims to correct, clarify, explain, expand, supplement or add to any portion of the Claims asserted herein, or otherwise, to both increase the dollar amounts of such Claims and provide additional information and documentation as is necessary to pursue these and such additional claims as are, or may be, held by Burnham, including, without limitation, the right to amend the Claims in the event an objection is made against any of the Claims or a claim is asserted against Burnham. Moreover, Burnham specifically reserves the right to conduct discovery with respect to this matter in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

24. No Admission. Nothing contained in the Claims shall be deemed an admission by Burnham. Burnham expressly reserves the right to withdraw the Claims as if it had never been filed.

25. Additional Reservations. In addition, the filing of these Claims is not intended, and shall not be deemed or construed as: (a) consent by Burnham to the jurisdiction of the Bankruptcy Court or any other court for any purpose other than with respect to issues directly related to the claims asserted in the Claims; (b) a waiver or release of any right of Burnham to have all disputes with the Debtor resolved through arbitration as may be provided in the documentation governing the Claims, notwithstanding whether or not such matters are designated as “core proceedings” pursuant to 28 U.S.C. § 157(b)(2); (c) consent by Burnham to a trial in the Bankruptcy Court or in any other court of any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise; (d) a waiver or release of the right of Burnham to have any and all final orders in any and all non-core matters

or proceedings entered only after de novo review by the United States District Court Judge; (e) a waiver or release of any right which Burnham may have to a jury trial; (f) a waiver of the right to move to withdraw the reference in respect of the subject matter of the Claims, any objection thereto or other proceeding which may be commenced in the Chapter 11 Cases against or otherwise involving Burnham; (g) an election of remedies; or (h) an admission of personal jurisdiction.

**IV. Notices Regarding the Claim**

26. All notices and correspondence with respect to the Claims (and, if filed, any objections thereto) must be sent to Burnham, and its counsel, at the following addresses:

BURNHAM STERLING AND COMPANY LLC  
29 River Road  
Suite 102  
Cos Cob, CT 06807

With a copy to:

Jason Kaplan  
Matthew Kremer  
O'MELVENY AND MYERS LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

Furthermore, designation of Jason Kaplan, Esq. and Matthew Kremer, Esq. of O'Melveny and Myers LLP ("O'Melveny") to receive all notices and correspondence related to the Claims shall not be construed as an appointment of Jason Kaplan, Esq., Matthew Kremer, Esq. and/or O'Melveny as authorized agents of Burnham, either expressly or impliedly, for purposes of receiving service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure made applicable pursuant to Federal Rules of Bankruptcy Procedure 7004 or other applicable law.

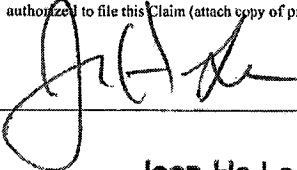
<b>UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</b>	<b>PROOF OF ADMINISTRATIVE CLAIM</b>																																													
THIS FORM SHOULD NOT BE USED FOR CLAIMS EXCLUDED BY SAID NOTICE NOR SHOULD IT BE USED FOR ANY CLAIMS THAT ARE NOT OF A KIND AND ENTITLED TO PRIORITY IN ACCORDANCE WITH 11 U.S.C. §§ 503(b) AND 507(a)(2), IT SHOULD NOT BE USED BY ANY PERSON ASSERTING CLAIMS PURSUANT TO SECTION 503(B)(9) OF THE BANKRUPTCY CODE.																																														
Fill in this information to identify the case (Select only one Debtor per claim form):																																														
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Name of Creditor (The person or entity to whom the debtor owes money or property)  Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your administrative expense claim. Attach copy of statement giving particulars.	Check here if this claim: <input type="checkbox"/> replaces or <input type="checkbox"/> amends a previously filed administrative expense claim.  Claim Number (if known):																																												
Name and Addresses Where Notices Should be Sent:  Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC 29 River Road Suite 102 Cos Cob, CT 06807	Name and Addresses Where Payment Should be Sent (if different):	Dated:																																												
1. BASIS FOR CLAIM: <input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Personal Injury/Wrongful Death <input type="checkbox"/> Wages (Dates): _____ <input type="checkbox"/> Money loaned <input type="checkbox"/> Taxes <input type="checkbox"/> Retiree Benefits as Defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Other (Specify): _____																																														
2. DESCRIPTION OF CLAIM (IF KNOWN): See Addendum																																														
3. TOTAL AMOUNT OF CLAIM: \$ <u>See Addendum</u> (Total)																																														

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AUG 23 2021

KURTZMAN CARSON CONSULTANTS



<p>4. <b>CREDITS AND SETOFFS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p> <p>5. <b>SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. Do not send original documents. If the documents are not available, explain. If the documents are voluminous, attach a summary. The Debtors may request full copies of your supporting documentation to substantiate the claim.</p> <p>6. <b>TIME-STAMPED COPY:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>	<p>THIS SPACE IS FOR COURT USE ONLY</p>
<p>Date: August 23, 2021</p>	<p>Sign and print the name and title, if any, of the creditor or other person authorized to file this Claim (attach copy of proof of attorney, if any)</p> 

Joon-Ho Lee  
Authorized Signatory

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AUG 23 2021

KURTZMAN CARSON CONSULTANTS

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11133 (MG)  
(Jointly Administered)

ADDENDUM TO PROOF OF CLAIM OF  
BABCOCK & BROWN SECURITIES LLC

Babcock and Brown Securities LLC f/k/a Burnham Sterling Securities LLC (“**Babcock**”), an unregistered entity providing financial advisory services, asserts the following claims (the “**Claims**”) against Avianca Holdings S.A. and its debtor-affiliates (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), and respectfully states as follows:

**I. Background**

1. Commencement of the Chapter 11 Cases. On May 10, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States

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<sup>1</sup> The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00- 1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47- 2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. 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.

Code, as amended (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

2. Debtors-in-Possession. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108.

3. Joint Administration. The Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered under case number 20-11133 (MG).

4. Bar Date. On October 29, 2020, the Debtors filed the *Notice of Debtors’ Application for an Order (I) Establishing Bar Dates for Filing Proofs of Claim; (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures; (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims; (IV) Providing Certain Supplemental Relief* [Docket No. 1138] (the “**Bar Date Motion**”). On November 16, 2020, the Bankruptcy Court granted the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, (II) Approving Proof of Claim Forms, Bar Date Notices, and Mailing and Publication Procedures, (III) Implementing Uniform Procedures Regarding 503(b)(9) Claims, and (IV) Providing Certain Supplemental Relief* [Docket No. 1180] approving the relief sought in the Bar Date Motion and establishing January 20, 2021 at 11:59 p.m. (PT) as the bar date for filing proofs of claims in the Chapter 11 Cases for general creditors (the “**Bar Date**”). On January 20, 2021, Babcock timely filed proof of claim number 2057 by the Bar Date (the “**Prepetition Claims**”). The filing of these Claims is not intended to, and does not, amend the Prepetition Claims filed by Babcock.

5. Rejection Orders. To date, the Bankruptcy Court has entered six orders that impact Babcock (each, a “**Rejection Order**” and collectively, the “**Rejection Orders**”), which include:

- *Order Authorizing the Debtors to (I) Enter into New Aircraft Lease and Letter of Intent and (II) Reject Pre-Petition Aircraft Lease with Wilmington Trust Company*

*(MSN 7928) and Certain Related Agreements* [Docket No. 1929], as subsequently modified by the *Order Authorizing the Debtors to (I) Enter Into New Aircraft Lease and (II) Reject Pre-Petition Aircraft Lease (MSN 8300) and Certain Related Agreements*, [Docket No. 2002];

- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIIV 2016 (MSNs 7284 and 7318) and Certain Related Agreements* [Docket No. 2004];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases with EAIIV 2015 (MSNs 6511, 6617, 6692, 6739, 6746, and 6767)* [Docket No. 2015];
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 4281 and 4284) and Certain Related Agreements* [Docket No. 2016]; and
- *Order Authorizing the Debtors to (I) Enter Into New Aircraft Leases and (II) Reject Pre-Petition Aircraft Leases (MSNs 3988 and 3992) and Certain Related Agreements* [Docket No. 2017].

6. Pursuant to the Rejection Orders, Babcock has thirty days from the date of each Rejection Order to file a new claim or amend a previously filed claim against any of the Debtors, for “damages based upon or resulting from the assumption, rejection or amendment of any unexpired leases or subleases related to each of the transactions.” Babcock does not believe that the thirty day deadline imposed by the Rejection Orders applies to the filing of administrative expense claims—which are not claims currently subject to any bar date and do not arise from the rejection of the applicable agreements. However, for the avoidance of doubt, Babcock has complied with such 30 day deadline, but reserves all rights to amend, supplement, or modify these Claims.

7. Necessity of Addendum. This addendum is annexed to the official administrative proof of claim form that set forth a summary of Babcock’s Claims against the Debtors. This addendum provides the parties in interest with relevant information and a description of the Claim.



8. Supporting Documentation. The documentation supporting these Claims are voluminous and may already be in the Debtors' possession. Nonetheless, such documentation is available upon request.

## II. The Claims

### A. The Personal Property Leases

9. The Debtors began contracting with Babcock in 2014 to arrange the financing and leasing of certain aircraft in exchange for certain fees (such services the "**Initiator Services**" and such fees the "**Initiator Fees**").

10. Babcock has not been paid the Initiator Fees for the Initiator Services the Debtors benefited from since the Petition Date.

11. As a result, Babcock files these Claims asserting any and all of its rights to Initiator Fees and other fees, remedies, damages, indemnities, and other claims (including contingent or unliquidated claims) against the Debtors arising on or after the Petition Date under, related to, or due under the following contracts (the "**Contracts**" together with the guarantees, lease agreements, sublease agreements, and any and all other related agreements, amendments or supplements thereto or modifications thereof, and any additional documents, agreements or instruments delivered in connection with any such related agreement, amendment, supplement or modification):

That certain Framework Agreement, dated as of July 30, 2015, among Avianca EAIV 2015-1 Trust and Avianca EAIV 2015-2 Trust, as Borrowers, Octo-Aircraft Leasing LLC, as Owner Participant, Avianca Holdings S.A., as Guarantor, the purchasers identified on Schedule I thereto, Wells Fargo Bank, National Association, as Security Trustee, with Babcock & Brown Securities LLC f/k/a Burnham Sterling Securities LLC and Burnham Sterling & Company LLC as Initiators (the "**2015 EAIV Financing**").

12. The Contracts provide that the Debtors have an unconditional obligation to pay Babcock (which is referred to as the “Initiator” in the relevant agreements) its compensation through the payment of the Initiator Fee on a schedule set forth in Contracts.

the Owner agrees to pay to the Security Trustee, for account of the Initiator, as and when due, the Initiator Fee.

*See e.g.*, Section 12.15 of that certain Omnibus Amendment No. 1, dated July 30, 2015 of that certain Note Purchase Agreement [Avianca EAIV 2015-1 Trust], dated July 30, 2015, between Wells Fargo Bank Northwest, National Association, as Owner, Avianca Holdings S.A., as Guarantor, and Aerovías Del Continente Americano S.A., as Lessee (the “**2015 EAIV Personal Property Trust Amendment**”).

13. Babcock is designated as an express third-party beneficiary under the Contracts entitled to enforce its rights under such agreements:

The Initiator shall be an express third party beneficiary of (i) the provisions of this Agreement and any other Basic Document that relate to the obligation of the Obligors to pay and the time and manner of payment of the Initiator Fee, any applicable Accelerated Initiator Fee and any applicable Initiator Prepayment Fee (including, without limitation, the obligation of the Lessee under the Lease and/or the Guarantor under the Guaranty, as the case may be, to pay the Initiator Fee, any applicable Accelerated Initiator Fee and any applicable Initiator Prepayment Fee as Supplemental Rent) . . . .

*See e.g.*, Section 12.15 of that certain 2015 EAIV Personal Property Trust Amendment.

14. As set forth below, these Claims are entitled to an administrative expense status under both Bankruptcy Code sections 365(d)(5) and 503(b).

B. Bankruptcy Code Section 365(d)(5)

15. Bankruptcy Code section 365(d)(5) obligates a debtor, after sixty days from its petition date, to “timely perform *all of the obligations*” on leases of personal property “until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title. . . .” Consequently,

pursuant to Bankruptcy Code section 365(d)(5), an administrative claim arises with respect to all unperformed obligations accruing after the first sixty days of the bankruptcy case. And administrative claims arising under a personal property lease under 365(d)(5) “are based upon the terms of the lease and not the benefit to the bankruptcy estate.” *In re Lakeshore Const. Co. of Wolfboro, Inc.*, 390 B.R. 751 (Bankr. D.N.H. 2008); *In re Wyoming Sand and Stone Co.*, 393 B.R. 359, 361 (M.D. Pa. 2008) (“Benefit to the estate is not an issue under § 365(d)(5), and, in the absence of intervening action by the Debtor, the obligation to perform under the lease remains.”).

16. Here, the applicable Contracts obligate the payment of Babcock’s fees and indisputably fall within the contractual obligations that give rise to an administrative expense claim under Bankruptcy Code section 365(d)(5). *Wyoming*, 393 B.R. at 361 (concluding that no showing of a benefit to the estate is required and “the Court has little discretion but to award [the applicable creditor] an allowance for that time period from the 60th day after filing until surrender of the equipment . . .”); *see also In re Hayes Lemmerz Int’l, Inc.*, 340 B.R. 461, 472 (Bankr. D. Del. 2006) (“Unlike parties claiming administrative expense status under section 503(b), lessors claiming under section 365(d)(10) need not prove they conferred any benefit upon the estate.”); *In re Glob. Container Lines Ltd.*, No. 09-78585 (AST), 2010 Bankr. LEXIS 5596, at \*8 (Bankr. E.D.N.Y. Feb. 25, 2010) (noting that section 365(d)(5) “expressly overrides Section 503(b)(1), again, unless the equities require otherwise,” requirement of showing a benefit to the estate).

17. Here, the sixtieth day from the Petition Date was July 9, 2020. The Rejection Orders are not yet effective, and will only become effective upon the Debtors entry into a new aircraft lease and new guarantee for each aircraft (the “**Rejection Date**”). Thus, Babcock’s Claims continue to accrue until such Rejection Date occurs.

18. Accordingly, for the foregoing reasons, Bankruptcy Code section 365(d)(5) requires the Debtors to pay Babcock administrative fees under the Contracts from the sixtieth day of these Chapter 11 Cases through the Rejection Date.

C. Section 503(b) of the Bankruptcy Code

19. In addition, Babcock is entitled to an administrative expense claim from the Petition Date through the Rejection Date pursuant to Bankruptcy Code section 503(b)(1). Bankruptcy Code section 503(b)(1) provides that the actual, necessary costs and expenses of preserving the Debtors' estate constitute administrative expenses, and that a party may file a request for payment of administrative expenses. 11 U.S.C. § 503(b)(1). Under section 503, the debtor must pay the counterparty to a lease agreement the reasonable administrative expense for the use of leased property that has benefited the bankruptcy estate. *See In re Patient Education Media, Inc.*, 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998); *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 531 (1984) ("If the debtor-in-possession elects to continue to receive benefits from the executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services . . . ."). The Second Circuit has recognized the presumption that the payment terms of a lease are a reasonable measure of the administrative expenses to be paid by a debtor. *Farber v. Wards Co., Inc.*, 825 F.2d 684, 689-90 (2d Cir. 1987).

20. Here, the use of the leased aircraft pursuant to the terms of the Contracts by the Debtors after the commencement of the Chapter 11 Cases provided a clear and undisputed benefit to the Debtors' estate and Babcock's Claims arising under such Contracts constitutes an administrative expense claim allowable under Bankruptcy Code section 503(b).

D. Claims Amount

21. For the foregoing reasons, pursuant to Bankruptcy Code sections 365(d)(5) and 503(b)(1) the following amounts must be paid as administrative expenses as such obligations arise under the Contracts.

<b>Babcock &amp; Brown Securities LLC</b>				
<b><u>MSN</u></b>	<b><u>Currency</u></b>	<b><u>Description</u></b>	<b><u>(A)</u></b>	<b><u>(B)</u></b>
			5/10/2020 - 8/23/2021	Post-Petition Default Interest
6617	USD	2015 EAIV-1	\$27,356.00	\$1,374.44
6692	USD	2015 EAIV-1	\$32,837.15	\$3,211.31
6739	USD	2015 EAIV-1	\$32,837.15	\$1,686.25
37507	USD	2015 EAIV-1	\$87,166.30	\$4,363.88
6767	USD	2015 EAIV-2	\$38,487.40	\$1,952.62
6511	USD	2015 EAIV-2	\$38,487.40	\$1,907.63
37508	USD	2015 EAIV-2	\$87,166.30	\$4,463.17
6746	USD	2015 EAIV-2	\$32,837.15	\$1,670.11
	<b>USD</b>	<b>Grand Total</b>	<b>\$377,174.85</b>	<b>\$20,629.40</b>

III. Reservation of Rights

22. Right to Amend. Babcock expressly reserves the right to amend or supplement the Claims to correct, clarify, explain, expand, supplement or add to any portion of the Claims asserted herein, or otherwise, to both increase the dollar amounts of such Claims and provide additional information and documentation as is necessary to pursue these and such additional claims as are, or may be, held by Babcock, including, without limitation, the right to amend the Claims in the event an objection is made against any of the Claims or a claim is asserted against Babcock. Moreover, Babcock specifically reserves the right to conduct discovery with respect to

this matter in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

23. No Admission. Nothing contained in these Claims shall be deemed an admission by Babcock. Babcock expressly reserves the right to withdraw the Claims as if it had never been filed.

24. Additional Reservations. In addition, the filing of these Claims is not intended, and shall not be deemed or construed as: (a) consent by Babcock to the jurisdiction of the Bankruptcy Court or any other court for any purpose other than with respect to issues directly related to the Claims asserted in the Claims; (b) a waiver or release of any right of Babcock to have all disputes with the Debtor resolved through arbitration as may be provided in the documentation governing the Claims, notwithstanding whether or not such matters are designated as “core proceedings” pursuant to 28 U.S.C. § 157(b)(2); (c) consent by Babcock to a trial in the Bankruptcy Court or in any other court of any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise; (d) a waiver or release of the right of Babcock to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by the United States District Court Judge; (e) a waiver or release of any right which Babcock may have to a jury trial; (f) a waiver of the right to move to withdraw the reference in respect of the subject matter of these Claims, any objection thereto or other proceeding which may be commenced in the Chapter 11 Cases against or otherwise involving Babcock; (g) an election of remedies; or (h) an admission of personal jurisdiction.

#### **IV. Notices Regarding the Claim**

25. All notices and correspondence with respect to the Claims (and, if filed, any objections thereto) must be sent to Babcock, and its counsel, at the following addresses:

BABCOCK & BROWN SECURITIES LLC  
29 River Road  
Suite 102  
Cos Cob, CT 06807

With a copy to:

Jason Kaplan  
Matthew Kremer  
O'MELVENY AND MYERS LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

Furthermore, designation of Jason Kaplan, Esq. and Matthew Kremer, Esq. of O'Melveny and Myers LLP ("O'Melveny") to receive all notices and correspondence related to the Claims shall not be construed as an appointment of Jason Kaplan, Esq., Matthew Kremer, Esq. and/or O'Melveny as authorized agents of Babcock, either expressly or impliedly, for purposes of receiving service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure made applicable pursuant to Federal Rules of Bankruptcy Procedure 7004 or other applicable law.