

Hearing Date & Time: January 19, 2023 at 11:00 a.m. (prevailing Eastern Time)

Objection Deadline: January 6, 2023 at 4:00 p.m. (prevailing Eastern Time)

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

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In re:	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A. <i>et al.</i> , ¹	:	Case No. 20-11133 (MG)
	:	
Debtors and Reorganized Debtors.	:	(Confirmed)
	:	
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**REORGANIZED DEBTORS' TWENTY-FIFTH OMNIBUS
OBJECTION TO PROOFS OF CLAIM**

¹ The Debtors and Reorganized Debtors in these chapter 11 cases, and each Debtors' and Reorganized Debtors' federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A) n/k/a HVA Associated Corp.; Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13- 1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' and Reorganized Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



**THIS OBJECTION SEEKS TO DISALLOW AND RECLASSIFY CERTAIN
CLAIMS FILED BY BURNHAM STERLING AND COMPANY LLC**

Avianca Holdings S.A. and its reorganized debtor affiliates in these proceedings (collectively, the “Reorganized Debtors”) hereby file this *Twenty-Fifth Omnibus Objection to Proofs of Claim* (the “Objection”) pursuant to *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3007 (I) Establishing Claims Objection and Notice Procedures and (II) Granting Related Relief* [Docket No. 1179] (the “Claims Objection Procedures Order”). By this Objection, the Reorganized Debtors object to and seek to (i) disallow certain administrative expense claims filed by Burnham Sterling and Company LLC (“Burnham”) in the cases of Aerovías del Continente Americano S.A. Avianca (“Aerovías”) and Taca International Airlines, S.A. (“Taca”) as duplicative of an administrative expense claim filed in the case of Avianca Holdings S.A. (“Avianca”); (ii) reclassify the administrative expense claim filed by Burnham in the Avianca case as a general unsecured claim; (iii) reclassify a secured claim filed by Burnham in the Avianca case as a general unsecured claim; and (iv) disallow two priority claims filed by Burnham in the Aerovías case that duplicate the reclassified claim. The subject claims and the proposed treatment are listed on the attached Schedule 1 to the proposed order attached to this Objection as **Exhibit A** (the “Disputed Claims”).² In support of this Objection, the Reorganized Debtors respectfully state as follows:

Preliminary Statement

1. Burnham acted as a broker or “initiator” for twenty prepetition aircraft transactions.

All of Burnham’s required services related to these transactions were completed prepetition. The

² In the Disputed Claims, Burnham does not provide the calculation for the alleged claim amounts, and the Reorganized Debtors reserve all right to review and object to such calculations in accordance with the Reorganized Debtors’ books and records.

transaction documents are structured such that Burnham, as a third-party beneficiary, would receive its fee for these prepetition services (the “Initiator Fee”) in increments over the life of the aircraft transaction, styled as “Additional Rent.” Accordingly, as of the petition date, Burnham had received some, but not all, of the fee for its completed services.

2. Through the Disputed Claims, Burnham attempts to characterize certain Initiator Fees it is owed as entitled to administrative claim priority under either (i) section 365(d)(5) of the Bankruptcy Code as an obligation under a lease of personal property or (ii) under section 503(b)(1) of the Bankruptcy Code because, it contends, the fees are actual and necessary costs of preserving Avianca’s estate. Neither argument is a sufficient basis to afford administrative priority status to the Disputed Claims. Unlike obligations that truly arise under a true lease, the broker fees were all earned prepetition, at the onset of the transaction, and are not true lease obligations. Further, because the services giving rise to Initiator Fees were all completed prepetition, they are not necessary costs of preserving Avianca’s estate. For these reasons, the remaining, non-duplicative Disputed Claim that is classified as a purported administrative claim (against Avianca), should be treated as a general unsecured claim in accordance with **Schedule 1**.

3. Burnham has also filed a purported secured claim, which is also incorrectly characterized. Burnham does not provide proof of a perfected security interest to support its purported secured claim and Avianca is not aware of any such secured obligation. Accordingly, the purported secured Disputed Claim should be reclassified as a general unsecured claim as set forth in with **Schedule 1**.

4. Finally, Burnham filed duplicative purported priority Disputed Claims which should be disallowed and expunged. No statutory basis exists for such claims, and allowing the claims would permit double recovery for Burnham.

Background

5. On May 10, 2020 (the “Initial Petition Date”), certain of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, and on September 21, 2020 (together with the Initial Petition Date, as applicable to each Debtor, the “Petition Date”), each of AV Loyalty Bermuda Ltd. and Aviacorp Enterprises S.A. filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”).

6. The Debtors operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code until they effectuated their emergence from bankruptcy on December 1, 2021. *See Notice of (I) Entry of Order Confirming Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors, (II) Occurrence of Effective Date, and (III) Final Deadlines for Filing Certain Claims* [Docket No. 2384]. The Debtors’ chapter 11 cases were jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Amended Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 73] and the *Order Directing Certain Orders in Chapter 11 Cases of Avianca Holdings S.A., et al Be Made Applicable to Subsequent Debtors* [Docket No. 1030].

7. On May 22, 2020, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (the “Committee”). *See Notice of Appointment of Official Committee of Unsecured Creditors* [Docket No. 154]. No trustee or examiner was appointed in the cases.

8. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the filing of these cases is set forth in the *Declaration of Adrian Neuhauser in Support of the Debtors’ Chapter 11 Petitions and First Day Orders* [Docket No. 20].

9. On November 16, 2020, the Court entered 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] that, among other things, established the following deadlines for filing proofs of claim in these cases: (a) January 20, 2021, at 11:59 p.m. (prevailing Pacific Time), for all entities (except for those specifically exempt) holding all types of claims against the Debtors that arose or are deemed to have arisen before the Petition Date; (b) February 5, 2021, at 11:59 p.m. (prevailing Pacific Time), for all governmental units holding claims that arose or are deemed to have arisen prior to the Petition Date; (c) the later of (i) the General Bar Date, or (ii) the later of the date that is (x) thirty days after the date of entry of an order authorizing the rejection of a contract or lease, or (y) the applicable rejection date for claims relating to the Debtors' rejection of an executory contract or unexpired lease; and (d) the later of (i) the General Bar Date and (ii) thirty days after the date that Notice of Amended Schedules is served on the affected claimant for claims whose amount or characterization has changed in the amended schedules (the "Bar Dates"). On November 16, 2020, the Court entered the Claims Objection Procedures Order [Docket No. 1179], that established procedures for Debtors to object to multiple claims in a single objection.

10. On November 2, 2021, the Court entered the *Order (I) Confirming Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors and (II) Granting Related Relief* [Docket No. 2300] (such underlying chapter 11 plan, the "Plan"). The Plan substantively consolidated all of the Debtors except Avifreight Holding Mexico, S.A.P.I. de C.V. ("Avifreight"), Aero Transporte de Carga Unión, S.A. de C.V. ("Aerounión"), and Servicios Aeroportuarios Integrados SAI S.A.S. ("SAI"). The substantively consolidated Debtors are

referred to herein as the “Consolidated Debtors.” The Plan became effective on December 1, 2021 (the “Effective Date”) and the Debtors became the Reorganized Debtors as of the Effective Date. *See Notice of (I) Entry of Order Confirming Further Modified Joint Chapter 11 Plan of Avianca Holdings S.A. and Its Affiliated Debtors, (II) Occurrence of Effective Date, and (III) Final Deadlines for Filing Certain Claims* [Docket No. 2384]. Pursuant to Section VII.E of the Plan, the Reorganized Debtors may adjust or expunge from the claims register maintained by the Debtors’ claims and solicitation agent (the “Claims Register”) any claims that have been paid or satisfied without further action, order, or approval of the Court.

11. The Plan provides that the Reorganized Debtors shall serve and file any objections to proofs of claim (each, a “Proof of Claim”) that have been filed against the Debtors on or before the date that is the latter of (a) 180 days after the Effective Date (i.e., May 31, 2022), pursuant to Bankruptcy Rule 9006(a)(1)(C)) and (b) such later date as may be fixed by the Bankruptcy Court upon notice and a hearing. On May 10, 2022, the Court entered the *Order Extending the Deadline to Object to Claims* [Docket No. 2572], which extended the deadline for the Reorganized Debtors to serve and file any objections to Proofs of Claim to December 2, 2022.

12. Burnham provided broker/arranger services for twenty of the Debtors’ aircraft leasing transactions.³ All of these services were provided on a pre-petition basis. *See, e.g.*, MSN 65315 Initiator Fee Letter § 5(c) (“The [Debtor] acknowledges that [Burnham] has already provided investment banking services to [the Debtor] prior to the Delivery Date[.]”). There is a suite of transaction documents that govern each of the twenty aircraft. Through each suite of documents for the transactions varies slightly depending on the type of transaction, Burnham is a

³ The relevant aircraft have the following manufacturer serial numbers (“MSNs”): 6617, 6692, 6739, 37507, 6767, 6511, 37508, 6746, 37511, 7284, 7318, 39407, 7887, 7928, 65315, 8300, 3988, 3992, 4281, and 4284 (the “Aircraft”)

third-party beneficiary in each of the twenty aircraft transactions. See, e.g., Framework Agreement § 2.8; MSN 7284 Loan Agreement § 12.5; MSN 7928 Sublease § 26.4; MSN 65315 Initiator Fee Letter § 5. As compensation for its prepetition broker services, Burnham are entitled to collect the Initiator Fees styled as additional or supplemental rent, which the Debtors pay in the first instance to a lessor/owner trust.

Jurisdiction and Venue

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

14. The Reorganized Debtors respectfully request the Court to enter an order (the “Proposed Order”), substantially in the form attached hereto as **Exhibit A**, disallowing and reclassifying or otherwise modifying, as applicable, each Disputed Claim in the amounts provided on the schedule to the Proposed Order.

Basis for Relief Requested

15. Section 502(a) of the Bankruptcy Code provides that any claim for which a proof of claim has been filed shall be deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim for the purposes of section 502(a) of the Bankruptcy Code. See In re Allegheny Int’l, Inc., 954 F.2d 167, 173 (3d Cir. 1992). However, a proof of claim is entitled to the presumption of *prima facie* validity only until an objecting party produces evidence to negate such *prima facie* validity. See In re Avaya, Inc., 608 B.R. 366, 369-70 (Bankr. S.D.N.Y. 2019).

16. If an objection is filed, the court, upon notice and a hearing, must determine the validity and/or the amount of the asserted claim. See 11 U.S.C. § 502(b). Once the objecting party refutes an allegation critical to the claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. Allegheny, 954 F.2d at 173. In other words, once the *prima facie* validity of a claim is rebutted, “it is for the claimant to prove his claim, not for the objector to disprove it.” In re Kahn, 114 B.R. 40, 44 (Bankr. S.D.N.Y. 1990) (citations omitted).

17. A debtor in possession has the duty to object to the allowance of any improperly asserted claim. 11 U.S.C. § 1106(a)(1). Section 502(b)(1) of the Bankruptcy Code provides that a claim may not be allowed to the extent that “such claim is unenforceable against the debtor.” 11 U.S.C. § 502(b)(1). Bankruptcy Rule 3007(d) and the Claims Objection Procedures Order permit the Debtors and Reorganized Debtors to file an objection to more than one claim on non-substantive bases, such as because such claims “have been satisfied” (Fed. R. Bankr. P. 3007(d)(5); see also, Claims Objection Procedures Order at ¶ 2), such claims are “incorrectly classified” (Claims Objection Procedures Order at ¶ 2(ii)), “do[] not include sufficient documentation to ascertain the validity of the claim” (Claims Objection Procedures Order at ¶ 2(iv)), “the amount claimed is inconsistent with or contradicts the Debtors’ books and records and the Debtors, after review and consideration of any information provided by the claimant, deny liability in excess of the amount reflected in the Debtors’ books and records” (Claims Objection Procedures Order at ¶ 2), or the claim “ha[s] been amended by subsequently filed proofs of claim” (Fed. R. Bankr. P. 3007(d)(3)).

18. **Disallowance of Duplicate Purported Administrative Expense Claims and Reclassification of Remaining Claim.** Burnham filed three identical claims seeking administrative expense status for Initiator Fees allegedly due post-petition (the “Purported

Administrative Expense Claims”) in Avianca (Claim 4033), Aerovías (Claim 4037), and Taca (Claim 4035), all of which cases were consolidated upon confirmation. Because the Disputed Claims against Aerovías (Claim 4037), and Taca (Claim 4035) are duplicative of the Disputed Claim against Avianca (Claim 4033), they should be disallowed and expunged. Failure to disallow two of these duplicate claims would result in Babcock receiving an unwarranted recovery against the Reorganized Debtors’ estates, to the detriment of other similarly situated creditors. To avoid the possibility of multiple recoveries by Babcock, the Reorganized Debtors respectfully request that the Court disallow the Purported Administrative Expense Claims filed in the cases of Aerovías (Claim 4037), and Taca (Claim 4035) and expunge them from the Reorganized Debtors’ Claims Register, in accordance with Schedule 1.

19. As to the remaining Purported Administrative Expense Claim against Avianca, Burnham contends the Administrative Expense Claims are entitled to priority under both Bankruptcy Code sections 365(d)(5)—as obligations under a lease of personal property not rejected within 60 days of the petition date—and 503(b)—as actual and necessary costs or expenses of preserving the estate. Neither Bankruptcy Code sections 365(d)(5) nor 503(b)(1) apply to Burnham’s claim for Initiator Fees.

20. First, Burnham’s Initiator Fees, *i.e.*, broker fees, are not “true lease” obligations as contemplated in section 365(d)(5). See e.g., In re Lakeshore Constr. Co. of Wolfeboro, Inc., 390 B.R. 751, 755-66 (Bankr. D.N.H. 2008) (“The provisions in § 365(d)(5) were added to the Bankruptcy Code in 1994 to make it easier for *lessors* of personal property to recover *postpetition* lease payments prior to acceptance or rejection of a lease by the trustee or debtor-in-possession.”) (emphasis added); In re Hayes Lemmerz Int’l, Inc., 340 B.R. 461, 472 (Bankr. D. Del. 2006) (noting the legislative history of § 365(d)(5) “clearly states Congress’s intent to give special

protection to *qualified lessors*”) (emphasis added). Further, Initiator Fees are distinguishable from other lease-related “obligations” that courts have considered pursuant to section 365(d)(5), such as rent, repair and maintenance charges, utilities, and taxes, which are incurred postpetition in connection with ongoing use of the leased property. See, e.g., In re Hayes Lemmerz Int'l, Inc., 340 B.R. at 491-92 (finding an administrative expense claim for repair and maintenance obligations appropriate under section 365(d)(5) where damage to leased machines first occurred postpetition, and citing to case law stating that rents and “such other items as common area maintenance charges, utilities, and even taxes” are obligations for the purposes of § 365(d)(5)) (internal citations omitted). Initiator Fees, by contrast, are obligations incurred *prepetition*, at the time of closing. They are brokerage fees related to work Burnham did, as broker, between 2015 and 2019 to arrange, or “initiate” the aircraft transactions in question. Rather than receiving the initiator fees at that time, the parties agreed to denominate the initiator fees as “Additional Rent” in the transaction documents, thereby nominally labeling as rent something that bears no resemblance to items typically considered rent. The fact that the obligations are labeled as “Additional Rent” in the transaction documents does not bear on the classification of such a claim in bankruptcy. See e.g., In re Pudgie’s Dev. of NY, Inc., 202 B.R. 832, 837 (Bankr. S.D.N.Y. 1996) (noting § 365(d)(3) (which courts often look to when construing section 365(d)(5)) should be “strictly construed” and determining that the obligation to pay attorneys’ fees, though included in the lease, is not one of the obligations within the scope section 365(d)(3) because it would not “make sense” for attorneys’ fees to fall within the scope section 365(d)(3) as such obligation “may fortuitously arise before or after the time period in question”); In re Child World, Inc., 161 B.R. 571, 576 (Bankr. S.D.N.Y. 1993) (holding where landlord submitted a postpetition bill for reimbursement of real estate taxes arising pre and postpetition that “[a]llowing landlords to recover for items of

rent which are billed during the postpetition, prerejection period, but which represent payment for services rendered by the landlord outside this time period, would grant landlords a windfall payment, to the detriment of other creditors, without any support from the legislative history. This conclusion is reinforced by the policy of narrowly construing statutory priorities in order to treat credits as equally as possible”).

21. Second, section 503(b)(1)(A) contemplates administrative expense claims only for “the *actual, necessary costs and expenses* of preserving the estate[.]” (emphasis added). Indeed, section 503(b)(1) is construed narrowly “to promote the goal of equality of distribution” because “the priority elevates the payment of the administrative claim to the detriment of unsecured creditors.” In re Patient Educ. Media, 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998). Creditors seeking administrative expense treatment under 503(b)(1) must first show that the claim arises from a post-petition transaction, *i.e.*, that it is a transaction between the debtor-in-possession and the creditor; and second, the creditor must show that the estate received a benefit from the transaction. See In re Grubb & Ellis Co., 478 B.R. 622, 624 (Bankr. S.D.N.Y. 2012). As such, a creditor is *not* entitled to administrative expense status under section 503(b)(1) simply because the right of payment arose post-petition; rather, services must have been induced by the debtor-in-possession. See id. Burnham’s services, for which the Initiator Fees are owed, occurred entirely on a prepetition basis; accordingly, such services were not *necessary* to preserve the estates. Moreover, Burnham makes no attempt to explain how it meets the two-part test for establishing administrative expense status under section 503(b)(1)(A), which burden lies squarely on Burnham’s shoulders.

22. Further, the Purported Administrative Expense Claims, as noted above, relate to transactions concerning the financing and leasing of certain aircraft, and after the Petition Date, the Debtors and the lessors entered into a stipulation which modified the terms of each of the

subject leases. See, e.g., Second Stipulation and Order Between Debtors and Aircraft Counterparties Concerning Certain Aircraft [Dkt. No. 401] (the “Second Stipulation”). The Second Stipulation provided that the rent due for each subject Aircraft would be set on a “power by the hour” basis (“PBH Agreements”). Rather than paying the rent and maintenance reserves as set forth in the subject leases, the Debtors would pay the lessors the amounts due as set forth in the PBH Agreements. The Second Stipulation and PBH Agreements do not allow for payment of the Supplemental Rent claimed by Burnham in its Administrative Claims.⁴

23. For these reasons, the Court should reclassify and allow the remaining Purported Administrative Expense Claim, filed in the Avianca case (Claim 4033), as a general unsecured claim. The proposed treatment is contained on **Schedule 1** to the Proposed Order.

24. **Reclassification of Secured Claim.** Burnham filed a secured claim for Initiator Fees (the “Purported Secured Claim”) in the Avianca case (Claim 2055), as more fully identified on **Schedule 1**. The amount of the Purported Secured Claim appears to reflect Initiator Fee payments due pre-petition. Burnham has provided no proof of a perfected security interest to support its claim. The Southern District of New York has highlighted the importance of complying with Bankruptcy Rule 3001(d) where a security interest is claimed. See In re Lehman Brothers Inc., 2019 WL 13043062 (S.D.N.Y. Sept. 30, 2019) (upholding reclassification of purported secured claims concerning a deferred compensation plan as unsecured claims). The Court there explained that “not all proofs of claim are prima facie evidence of the validity and amount of the claim” and that “[o]ne of the rules with which Claimants must comply – Rule 3001(d) – states that ‘[i]f a security interest in property of the debtor is claimed, the proof of claim shall be accompanied

⁴ In addition, under the well-established principles of recharacterization, it is likely that these transactions are best characterized as financing transactions as opposed to lease transactions. Thus, any Disputed Claims pursuant to true lease obligations should be disallowed. Reorganized Debtors reserve all rights to pursue recharacterization of the transactions to the extent the Disputed Claims are not disallowed and reclassified in accordance with **Schedule 1**.

by evidence that the security interest has been perfected.” Id. at *4. The Court noted that the “Basis for perfection” section of the proof of claim form stated “See Addendum”, and while the Addendum asserted that the claim was secured, it did not explain or assert how this interest was perfected – nor was such evidence presented elsewhere in the proofs of claim. Id. (finding further, at *5, that other evidence proffered by claimants was insufficient to make the prima facie showing). Accordingly, here, absent proof of a perfected security interest, the Purported Secured Claim should be reclassified as a general unsecured claim (the “Surviving General Unsecured Claim as listed on Schedule 1 to the Proposed Order”).

25. **Disallowance of Duplicate Purported Priority Claims.** Burnham also filed purported priority claims for the Initiator Fees in the Aerovías case (Claim 4026) and in the Taca case (Claim 4027; together with Claim 4026, the “Purported Priority Claims”), which cases have, as noted above, been substantively consolidated with the Avianca case. Together totaling an amount identical to the Purported Secured Claim, Burnham contends that the Purported Priority Claims are entitled to priority under section 507 of the Bankruptcy Code. Burnham does not specify the particular provision of 507 establishing priority. Instead, Burnham references an annex to each proof of claim, which is likewise silent as to the basis for priority. This Court has disallowed a purported priority claim (based on “services performed” and “money loaned”) where the proof of claim “fail[ed] to specify the required statutory basis for filing a priority claim and indeed, no such statutory basis exist[ed]...” In re InterBank Funding Corp., 310 B.R. 238, 248 (Bankr. S.D.N.Y. 2004) (describing the statutory bases under section 507 and finding that claimant failed to demonstrate the existence of any such basis). Similar to the claimant in InterBank, Burnham has failed to establish entitlement to priority treatment under section 507.

26. Stripped of priority, the Purported Priority Claims duplicate the Surviving General Unsecured Claim and should be disallowed and expunged. Failure to disallow these duplicate claims could result in Burnham receiving an unwarranted duplicative recovery against the Reorganized Debtors' estates, to the detriment of other similarly situated creditors. To avoid the possibility of multiple recoveries by Burnham, the Reorganized Debtors respectfully request that the Court disallow the Purported Priority Claims listed on **Schedule 1** to the Proposed Order and expunge them from the Reorganized Debtors' Claims Register.

Separate Contested Matter

27. Each objection to the Disputed Claims constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. The Reorganized Debtors request that the order entered with respect to this Objection be deemed a separate final order with respect to each Disputed Claim.

Responses to Objections

28. For any claimant who timely files and properly serves a response to this Objection (each, a "Response") as set forth in the *Notice of Hearing on Reorganized Debtors' Twenty-Fifth Omnibus Objection to Proofs of Claim*, attached as **Exhibit B**, the Reorganized Debtors will schedule such Response to be heard at the omnibus hearing at which this Objection will be heard, which is scheduled for January 19, 2023 at 11 a.m. (prevailing Eastern Time).

29. To the extent no Response is timely filed with respect to a Disputed Claim, the Reorganized Debtors request that the Court enter an order disallowing or reducing, as applicable, all such Disputed Claims.

Notice

30. Notice of this Objection has been provided to all claimants whose proofs of claim are the subject of the Objection, the Office of the U.S. Trustee, and all other parties entitled to notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtors submit that no other or further notice need be given.

Reservation of Rights

31. The Reorganized Debtors reserve the right to modify, supplement and/or amend this Objection as it pertains to any claim identified herein.

No Prior Request

32. No prior request for the relief sought in this Objection has been made to this or any other court.

WHEREFORE, the Reorganized Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: New York, New York
December 2, 2022

/s/ John G. McCarthy
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Exhibit A to Twenty-Fifth Omnibus Claims Objection

Proposed Order

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

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: :
In re: : Chapter 11
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AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
: :
Debtors and Reorganized Debtors. : (Confirmed)
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**ORDER GRANTING THE REORGANIZED DEBTORS' TWENTY-FIFTH
OMNIBUS OBJECTION TO PROOFS OF CLAIM**

Upon the *Reorganized Debtors' Twenty-Fifth Omnibus Objection to Proofs of Claim* (the "Twenty-Fifth Omnibus Claims Objection"),² whereby the Reorganized Debtors have requested, in accordance with sections 105 and 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3007 (I) Establishing Claims Objection and Notice Procedures and (II) Granting Related Relief* [Docket No. 1179], entry of an order disallowing and expunging or reclassifying the claims identified on the Schedule hereto; and

¹ The Debtors and Reorganized Debtors in these chapter 11 cases, and each Debtors' and Reorganized Debtors' federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A) n/k/a HVA Associated Corp.; Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13- 1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAIS.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' and Reorganized Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

² Capitalized terms not otherwise defined herein shall be given the meanings ascribed to them in the Twenty-Fifth Omnibus Claims Objection.

it appearing that the relief requested is in the best interests of the Reorganized Debtors' estates, their creditors and other parties in interest; and the Court having jurisdiction to consider the Twenty-Fifth Omnibus Claims Objection and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Twenty-Fifth Omnibus Claims Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Twenty-Fifth Omnibus Claims Objection having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Twenty-Fifth Omnibus Claims Objection is granted as set forth herein.
2. The Purported Administrative Expense Claims filed in the case of Aerovías (Claim 4037), and Taca (Claim 4035) and identified in **Schedule 1** attached hereto are disallowed in their entirety for all purposes in these bankruptcy cases and shall be automatically expunged from the Claims Register maintained in these cases.
3. The Purported Administrative Expense Claim filed in the Avianca case (Claim 4033) and identified in **Schedule 1** attached hereto is reclassified as a general unsecured claim.
4. The Purported Secured Claim filed in the Avianca case (Claim 2055) and identified in **Schedule 1** attached hereto is reclassified as a general unsecured claim.
5. The Purported Priority Claims filed in the Aerovías case (Claim 4026) and in the Taca case (Claim 4027) and identified in **Schedule 1** attached hereto are disallowed in their entirety for all purposes in these bankruptcy cases and shall be automatically expunged from the Claims Register maintained in these cases.

6. The Debtors and their claims agent are authorized to take all actions necessary to effectuate the relief granted in this Order, including updating the Claims Register to reflect the relief granted herein.

7. Any response to the Twenty-Fifth Omnibus Claims Objection not otherwise withdrawn, resolved, or adjourned is hereby overruled on its merits.

8. Except as provided in this Order, nothing in this Order shall be deemed (a) an admission or finding as to the validity of any claim against a Debtor, (b) a waiver of the right of the Reorganized Debtors to dispute any claim against any Debtor on any grounds whatsoever, at a later date, (c) a promise by or requirement on any Debtor to pay any claim, or (d) a waiver of the rights of the Reorganized Debtors under the Bankruptcy Code or any other applicable law.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
December ____, 2022

THE HONORABLE MARTIN GLENN
CHIEF UNITED STATES BANKRUPTCY JUDGE

Schedule 1 to Order

Disputed Claims

Disputed Claims – Burnham Sterling and Company LLC⁵

Bankr. Case	Filed As	Claim No.	Date POC filed	Amount	Basis	Notes	Treatment
Taca International Airlines S.A., Case No. 20-11168	Admin	4035	8/23/2021	US\$1,827,083.66 total (for 5/10/2020-8/23/21); US\$78,991.37 post-petition default interest	Initiator Fee payments due post-petition	Includes MSNs: 6617 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 6692 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 6739 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 37507 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 6767 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 6511 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 37508 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 6746 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 37511 - 2016 EAIV 7284 - 2016 EAIV [EUR currency] 7318 - 2016 EAIV [EUR currency] 39407 - 2017 JOLCO 7887 - 2017 JOLCO 7928 - 2017 JOLCO 65315 - 2018 JOLCO 8300 - 2018 JOLCO 3988 - 2019 JOLCO 3992 - 2019 JOLCO 4281 - 2019 JOLCO 4284 - 2019 JOLCO	disallowed and expunged

⁵ In the Disputed Claims, Burnham does not provide the calculation for the alleged claim amounts, and the Reorganized Debtors reserve all rights to review and object to such calculations in accordance with the Reorganized Debtors' books and records.

Bankr. Case	Filed As	Claim No.	Date POC filed	Amount	Basis	Notes	Treatment
Aerovias del Continente Americano S.A. Avianca, Case No. 20-11134	Admin	4037	8/23/2021	US\$1,827,083.66 total (for 5/10/2020-8/23/21); US\$78,991.37 post-petition default interest	Initiator Fee payments due post-petition	Includes MSNs (same as above): 6617 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 6692 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 6739 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 37507 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 6767 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 6511 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 37508 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 6746 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 37511 - 2016 EAIV 7284 - 2016 EAIV [EUR currency] 7318 - 2016 EAIV [EUR currency] 39407 - 2017 JOLCO 7887 - 2017 JOLCO 7928 - 2017 JOLCO 65315 - 2018 JOLCO 8300 - 2018 JOLCO 3988 - 2019 JOLCO 3992 - 2019 JOLCO 4281 - 2019 JOLCO 4284 - 2019 JOLCO	disallowed and expunged

Bankr. Case	Filed As	Claim No.	Date POC filed	Amount	Basis	Notes	Treatment
Avianca Holdings S.A., Case No. 20-11133	Admin	4033	8/23/2021	US\$1,827,083.66 total (for 5/10/2020-8/23/21); US\$78,991.37 post-petition default interest	Initiator Fee payments due post-petition	Includes MSNs (same as above): 6617 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 6692 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 6739 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 37507 - 2015 EAIV-1 (MSN in Babcock Admin POCs; diff't amt) 6767 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 6511 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 37508 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 6746 - 2015 EAIV-2 (MSN in Babcock Admin POCs; diff't amt) 37511 - 2016 EAIV 7284 - 2016 EAIV [EUR currency] 7318 - 2016 EAIV [EUR currency] 39407 - 2017 JOLCO 7887 - 2017 JOLCO 7928 - 2017 JOLCO 65315 - 2018 JOLCO 8300 - 2018 JOLCO 3988 - 2019 JOLCO 3992 - 2019 JOLCO 4281 - 2019 JOLCO 4284 - 2019 JOLCO	reclassified as general unsecured claim

Bankr. Case	Filed As	Claim No.	Date POC filed	Amount	Basis	Notes	Treatment
Avianca Holdings S.A., Case No. 20-11133	Secured	2055	1/20/2021	\$12,511,109.69	Initiator Fee payments due prepetition	POC form indicates claim is not based on a lease The \$12,511,109.69 claim amount is the total of priority claim nos. 4026 and 4027 below	reclassified as GUC
Aerovias del Continente Americano S.A. Avianca, Case No. 20-11134	Priority	4026	8/13/2021	\$11,473,701.87	Initiator Fee payments due prepetition	The physically signed POC form states that "various other parties to the contracts referenced in the annex" made earlier filing for this claim Annex refers to POC 2055 filed against Avianca on 1/20/21, and states that this POC is being filed pursuant to par. 11 of court's 7/23/21 order, dkt no. 1929 (Annex, par. 6-7)	disallowed and expunged
Taca International Airlines S.A., Case No. 20-11168	Priority	4027	8/13/2021	\$1,037,407.82	Initiator Fee payments due prepetition	The physically signed POC form states that "Condor Ltd. (as Lessor)" made earlier filing for this claim Annex refers to POC 2055 filed against Avianca on 1/20/21, and states that this POC is being filed pursuant to par. 11 of court's 7/23/21 order, dkt no. 1929 (Annex, par. 6-7)	disallowed and expunged

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Exhibit B to Twenty-Fifth Omnibus Claims Objection

Notice of Hearing

John G. McCarthy
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Fax: (212) 907-9800

*Counsel for Debtors and Reorganized
Debtors*

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

-----X
In re: : Chapter 11
: :
AVIANCA HOLDINGS S.A. *et al.*,¹ : Case No. 20-11133 (MG)
: :
Debtors and Reorganized Debtors. : (Confirmed)
: :
-----X

**NOTICE OF HEARING ON THE REORGANIZED DEBTORS' TWENTY-FIFTH
OMNIBUS OBJECTION TO PROOFS OF CLAIM**

PLEASE TAKE NOTICE that, on December 2, 2022, Avianca Holdings S.A. and its reorganized debtor affiliates in these proceedings (collectively, the "Reorganized Debtors"), filed their Twenty-Fifth Omnibus Objection to Proofs of Claim (the "Objection") with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

¹ The Debtors and Reorganized Debtors in these chapter 11 cases, and each Debtors' and Reorganized Debtors' federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A) n/k/a HVA Associated Corp.; Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Loyalty Bermuda Ltd. (N/A); AV Taca International Holdco S.A. (N/A); Aviacorp Enterprises S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13- 1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaragüense de Aviación, Sociedad Anónima (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aéreo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors' and Reorganized Debtors' principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

THIS OBJECTION ADDRESSES ONE OR MORE OF THE CLAIM(S) YOU HAVE FILED IN THE REORGANIZED DEBTORS' CASES. Schedule 1 annexed to the Objection (attached hereto) identifies your claims and the category of claim objections applicable to you. The complete Objection can be viewed and/or obtained by: (i) accessing the Court's website at www.nysb.uscourts.gov, or (ii) free of charge from the Reorganized Debtors' notice and claims agent, KCC, at <http://www.kccllc.net/avianca> or by calling (866) 967-1780 (U.S./Canada) or +1 (310) 751-2680 (International). Note that a PACER password is needed to access documents on the Court's website. The complete Objection is entitled *Reorganized Debtors' Twenty-Fifth Omnibus Objection to Proofs of Claim*.

The Objection requests that the Bankruptcy Court (i) reclassify an improperly filed as secured; and (ii) disallow two unsecured priority claims as improper and duplicative; and (iii) disallow certain administrative expense claims as improper and duplicative. The subject claims and the proposed treatment are listed on the attached Schedule 1 to the proposed order attached to this Objection as **Exhibit A** (the "Disputed Claims"). Any claim that the Bankruptcy Court expunges or disallows will be treated as if such claim had not been filed. Any claim that the Bankruptcy Court reclassifies will be treated as if such claim had been filed in the reclassified class.

If you DO oppose the disallowance, expungement, or reclassification of your claim(s) listed in the Schedule then you MUST file a written response to the Objection (the "Response") ON OR BEFORE January 6, 2023 AT 4 P.M. EASTERN TIME (the "Response Deadline") and serve such Response as set forth herein. If you DO NOT oppose the disallowance, expungement, or reclassification of your claim(s) listed in the Schedule then no further action is required by you.

The Response, if any, must include the following: (i) a caption identifying the name of the Bankruptcy Court, the names of the Reorganized Debtors, the case number and the title of the Objection to which the Response is directed; (ii) the name of the claimant and description of the basis for the claim; (iii) a short statement describing the reasons for which the claim should not be disallowed or reclassified as set forth in the Objection; (iv) additional documentation or other evidence upon which you rely in opposing the Objection (if it was not included with the proof of claim previously filed with the Bankruptcy Court); (v) the address(es) to which the Reorganized Debtors must return any reply to your Response, if different from that presented in your proof of claim; (vi) the name, address, and telephone number of the person (which may be you or your legal representative) holding ultimate authority to resolve the claim on your behalf.

The Bankruptcy Court will consider a Response only if the Response is filed with the Court on or prior to the Response Deadline. All Responses must be served on (i) the Bankruptcy Court at Chambers of Honorable Judge Martin Glenn, One Bowling Green, New York, New York 10004-1408, (ii) counsel for the Reorganized Debtors at Milbank LLP, 55 Hudson Yards, New York, New York 10001 (Attn: Evan R. Fleck, Esq., Gregory A. Bray, Esq., and Benjamin Schak, Esq. (efleck@milbank.com, gbray@milbank.com, and bschak@milbank.com)) and Smith, Gambrell & Russell, LLP, 1301 Avenue of the Americas, 21st Floor, New York, New York 10019 (Attn: John G. McCarthy, Esq. and Brian P. Hall, Esq. (jmccarthy@sgrlaw.com, and bhall@sgrlaw.com)) and (iii) the Reorganized Debtors, c/o Richard Galindo (richard.galindo@avianca.com).

A HEARING WILL BE HELD ON JANUARY 19, 2023(the “Hearing”) to consider the Objection. **THE HEARING WILL BE HELD AT 11 A.M. (EASTERN TIME)** at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Room 523, New York, New York 10004 in front of the Honorable Martin Glenn. If you file a written Response to the Objection, you or your counsel must attend the Hearing (which attendance may be via Zoom for Government). In light of the COVID-19 pandemic, the Hearing may be conducted via Zoom for Government. Parties wishing to appear at the Hearing, whether in a “live” or “listen only” capacity, must make an electronic appearance through the “eCourtAppearances” tab on the Court’s website (<http://www.nysb.uscourts.gov/content/judge-martin-glenn>) no later than 4:00 p.m. (prevailing Eastern Time) the business day before the Hearing (the “Appearance Deadline”). Following the Appearance Deadline, the Court will circulate by email the Zoom link to the Hearing to those parties who have made an electronic appearance. Parties wishing to appear at the Hearing must submit an electronic appearance through the Court’s website by the Appearance Deadline and not by emailing or otherwise contacting the Court. The Court will not respond to late requests that are submitted on the day of the hearing. Additional information regarding the Court’s Zoom and hearing procedures can be found on the Court’s website. The Reorganized Debtors reserve the right to continue the Hearing on the Objection for your claim(s) at a later date.

If the Bankruptcy Court does NOT disallow, expunge, or reclassify your claim(s) listed in **Schedule 1** then the Reorganized Debtors may object on other grounds to the claim(s) (or to any other claims you may have filed) at a later date. You will receive a separate notice of any such objection.

Dated: December 2, 2022
New York, New York

/s/ John G. McCarthy
John G. McCarthy
SMITH, GAMBRELL & RUSSELL, LLP
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