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Debtors-In-Possession*

**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> , <sup>1</sup>	: Case No. 20-11133 (MG)
	: :
Debtors.	: (Joint Administration Requested)
	: :
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**DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS  
PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE  
(I) AUTHORIZING DEBTORS TO PAY OR HONOR PREPETITION OBLIGATIONS  
TO CUSTOMERS, TRAVEL AGENTS, CHARTER AND TOUR OPERATORS, AND  
CERTAIN OTHER BUSINESS ENTITIES; (II) MODIFYING AUTOMATIC STAY TO  
THE EXTENT NECESSARY TO EFFECTUATE ORDINARY COURSE SETOFFS  
WITH SUCH COUNTERPARTIES; AND (III) GRANTING RELATED RELIEF**

<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: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovias del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Isleña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.



TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Avianca Holdings S.A. and its affiliated debtors in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), as debtors and debtors-in-possession (collectively, the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):<sup>2</sup>

### **RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form of **Exhibit A** (“Proposed Interim Order”) and **Exhibit B** (“Proposed Final Order”) hereto, pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”) (i) authorizing (but not directing) the Debtors to pay or honor prepetition obligations to customers, travel agencies, charter and tour operators, and other ordinary course counterparties; (ii) modifying the automatic stay to the extent necessary to effectuate ordinary course setoffs with such counterparties; and (iii) granting certain related relief.

### **JURISDICTION**

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code.

### **STATUS OF THE CASE**

6. On the date hereof (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the First Day Declaration (as defined below).

7. Each Debtor is continuing to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. No creditors' committee has yet been appointed in these cases. No trustee or examiner has been appointed.

9. The Debtors have filed a motion requesting joint administration of the Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules").

### **BACKGROUND**

10. Avianca is the second-largest airline group in Latin America and the most important carrier in the Republic of Colombia and in the Republic of El Salvador. It is the largest airline in the Republic of Colombia (the third largest Latin American economy), a code-share partner of United Airlines, and a member of the Star Alliance which, with 26 members, is the world's largest global airline alliance. Established in 1919, Avianca has a 100-year legacy as a leading provider of air travel and cargo services in the Latin American market and around the globe. Avianca is well respected throughout Latin America and maintains significant customer brand equity and market share in the regions it services.

11. The Debtors operate an extensive network of routes from their primary hubs in Bogotá and San Salvador (in addition to other focus markets) and offer passenger services on more than 5,350 weekly flights to more than 76 destinations in 27 countries. With approximately 18,900 employees and approximately \$3.9 billion in annual revenues, the Debtors play a key role in the Latin American airline market.

12. Despite an effective debt reprofiling executed in the second half of 2019, a significant improvement in Avianca's liquidity position in early 2020, and the successful 2019

launch of the “Avianca 2021” transformation plan (as further described below), the Debtors have been compelled to file these Chapter 11 Cases for one principal reason: the COVID-19 pandemic, which has affected the world’s population and economies in ways that have never been experienced. The reduction in travel as a result of the virus, and the measures undertaken to combat the virus, including restrictions commercial flights and on travel, have had and will continue to have an adverse impact on the Debtors. As a result of the ongoing pandemic and its consequences, the Debtors are facing significantly reduced revenues from ticket sales and ancillary revenues, government prohibitions globally on international flights, substantial ongoing contractual obligations to their lessors, lenders and other creditors, and a near complete standstill of the global economy—all with significant continued impact and limited visibility as to the potential market recovery.

13. On March 20, 2020, the Republic of Colombia, consistent with what numerous other governments around the world have done, announced that it would close its airspace to address the spread of COVID-19. As a result of the restrictions imposed by the Colombian government, as well as similar measures in various other of the Debtors’ primary markets, on March 24, 2020 the Debtors announced that they were suspending all scheduled passenger flights from March 25, 2020 until at least the end of April 2020; this situation has now been extended and is ongoing, and no date has been established for restart of flights.

14. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Adrian Neuhauser in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), which is being filed contemporaneously herewith and is incorporated by reference herein.

**BACKGROUND RELEVANT TO MOTION**

15. Maintaining public confidence in the Debtors' ability to provide reliable transportation services is crucial to their reorganization efforts. Because of the filing of these Chapter 11 Cases, the Debtors must take immediate, active steps to preserve their loyal customer base world-wide and their essential business relationships with tour operators, cargo agencies, and travel agencies. Counterparties to these business relationships (whether or not governed by written contracts) have discretion to direct or refrain from directing future business to the Debtors. The loss of such future business would vastly outweigh the amounts the Debtors are seeking authority to pay by this Motion.

**A. Tickets and Vouchers**

16. The Debtors seek authorization to honor obligations to their customers where the customers paid for the Debtors' services but did not utilize such services prior to the Petition Date. This includes obligations for tickets, airbills, and cargo transportation (collectively, the "Tickets"). In addition, the Debtors seek authorization to honor vouchers that have been issued prepetition for free or discounted travel (the "Vouchers"). The Vouchers, which may have been issued as compensation to passengers for late, canceled, or overbooked flights, in lieu of refunds, or as part of promotional programs, form just as much of a basis for reasonable travel expectations as regularly issued tickets.

**B. Frequent Flyer and Loyalty Programs**

17. The Debtors seek authorization, but not direction, to provide air transportation to travelers who seek to redeem miles earned prepetition as part of the Debtors' frequent flyer program, LifeMiles<sup>TM</sup>. The LifeMiles program is a coalition loyalty program owned and operated by non-debtor LifeMiles Ltd., a limited liability company organized and existing under the laws of Bermuda ("LifeMiles Ltd."). LifeMiles Ltd. is a majority-owned indirect subsidiary of the

Debtors' ultimate parent company, Avianca Holdings, S.A. Under the LifeMiles program, customers earn mileage credits by flying on Avianca or its alliance partners and by using the services of participating bank credit cards, hotels, car rental firms, and other non-airline commercial partners. Honoring the LifeMiles program will not involve any cash expense above those costs normally incurred in providing travel to passengers.

18. LifeMiles members may also receive other goods and services from LifeMiles partners by redeeming miles earned in the LifeMiles program, which does not require any cash outlay by the Debtors. The Debtors also seek authority to continue to honor their obligations to participating hotels, rental car agencies, and other LifeMiles partners with respect to air mileage credits issued under the LifeMiles program;<sup>3</sup> provided, however, that such authority shall not be deemed to be an assumption or acceptance of any executory contract or unexpired lease.

19. Frequent flyer programs such as the LifeMiles program build and maintain a loyal customer base, especially among business travelers who pay higher fares than do leisure travelers. Approximately 32% of the Debtors' total passenger revenues are generated from passengers who are members of the LifeMiles program (the LifeMiles program generated revenues in excess of \$337 million in 2019). The Debtors' business would be negatively impacted if the Debtors were unable to continue the LifeMiles program, due to the loss of the revenues generated by the LifeMiles program and alienation of the Debtors' most valued customers, their frequent flyers. In

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<sup>3</sup> Certain of the Debtors are parties to frequent flyer agreements with other airlines whereby the Debtors agree to offer LifeMiles members the opportunity to accrue benefits and utilize program awards for travel on other airlines' flights and vice versa. Under those agreements, for example, when a passenger holding another airline's miles redeems such miles for travel on Avianca, that airline must pay Avianca, and when a passenger holding LifeMiles redeems such miles for travel on another airline, Avianca must pay that airline. These amounts are settled in accordance with the terms of the parties' agreement or through an airline clearinghouse. The Debtors request authority to make payments to other airlines under these reciprocal frequent flyer agreements in a concurrently filed motion, which seeks authority for the Debtors, among other things, to, in their discretion, satisfy certain prepetition frequent flyer obligations to other airlines that in certain instances are cleared through the airline clearinghouse.

addition, the loss of the LifeMiles program would render the Debtors less competitive against the other major airlines that offer their own loyalty programs.

20. In accordance with International Financial Reporting Standards, the Debtors account for frequent flyer obligations by deferring the aggregate cost of the rewards miles until they are redeemed. As of May 10, 2020, the Debtors had booked approximately \$7,333,642 as a liability for the LifeMiles program, representing approximately 2,771,256,909 unredeemed reward miles.

**C. VIP Lounges**

21. The Debtors' customers have access to more than 30 of Avianca's private airport lounges and its affiliated partner lounge locations worldwide (collectively, the "VIP Lounges"). Each Debtor-operated location provides a variety of services and amenities to help customers make the most of their travel experience. The VIP Lounges represent an important part of the Debtors' customer experience and loyalty program. The Debtors are seeking authority to continue to honor VIP Lounge memberships and access passes purchased prior to the Petition Date.

**D. Ticket Refunds**

22. The Debtors also seek authorization to allow ticketholders to obtain refunds in accordance with the terms of their tickets (in the form of "chargebacks," as discussed below and/or refunds paid directly to ticketholders). Historically, the Debtors' normal ticket refund rate has been 2% of total ticket sales, though this number may increase due to COVID-19 and laws and regulations in various countries requiring refunds. Since the Debtors intend to operate their business in the ordinary course, maintaining the refundability of tickets will not lead to a "run on the bank." Quite to the contrary, maintaining the refundability of tickets purchased prepetition will enhance the public's confidence in the continued reliability of the Debtors' operations. In

addition, as mentioned above, the Debtors may be required by laws and regulations in various countries to provide refunds.

**E. Gift Cards**

23. The Debtors also use branded gift cards sold in various denominations via their website (www.avianca.com) and by third-party vendors (collectively, the “Gift Cards”). The Debtors’ customers may use the Gift Cards towards the purchase of eligible services. The Debtors seek authorization to continue to honor outstanding Gift Cards, in an effort to maintain customer confidence and goodwill. Refusing to honor Gift Cards will harm the Debtors’ relationships with their customers and their business franchise. The Debtors estimate that the face amount of Gift Cards issued by the Debtors and currently outstanding is approximately \$7,550.

**F. Certificate Programs**

24. The Debtors also seek permission to continue to operate their travel coupon programs (the “Certificate Programs”) and to honor any certificates issued prepetition that are presented postpetition. The Certificate Programs provide travelers with a wide variety of benefits, including upgrades, coupons for discounts, free travel, companion passes, discount fares, and similar benefits. The Certificate Programs enhance revenue and build and maintain consumer confidence and loyalty in the Debtors. Moreover, maintaining the Certificate Programs does not require significant cash outlays by the Debtors, and the associated cost is insignificant compared to the benefits the Debtors will derive from honoring the Certificate Programs.

**G. Corporate Incentive Programs**

25. In addition, as of the Petition Date, certain Debtors were parties to agreements with large corporate clients, pursuant to which the Debtors provide discounts and special fares at the time of purchase in return for purchase commitments. In addition, upon attainment of the purchase commitments by these corporate clients, the Debtors may grant them rebates of cash, upgrade

certificates, free tickets, and VIP Lounge passes. This practice is standard in the airline industry and without such agreements the Debtors would be at a competitive disadvantage. The Debtors estimate the costs attendant to these payments to be *de minimis* in comparison to the revenues generated by such sales agreements.

26. The Debtors also have a travel loyalty program designed to reward small to medium-sized companies for maintaining travel policies that encourage their employees to fly on Avianca or its alliance partners. Under these loyalty programs, employees of participating companies earn credits for their companies by flying on Avianca or its alliance partners. These credits are later redeemable for travel on Avianca or for upgrades or VIP Lounge passes.

27. The Debtors must continue honoring these corporate incentive programs to provide their customers important services and remain competitive with other airlines.

#### **H. Travel Agencies**

28. As of March 15, 2020, the Debtors generated 44.3% of their year-to-date passenger sales through travel agencies. Approximately 21% of the Debtors' travel agency business involves the Debtors' corporate clients.

29. The Debtors have contracts with global, national, and regional travel agencies, including Despegar.com, Price Travel, Aviatur S.A., BCD Colombia, BCD Travelbti Colombia, and Carlson Wagonlit Travel. The Debtors use multiple "pay-for-performance" incentive structures to reward travel agencies for selling Avianca tickets rather than tickets of other airlines. If the individual agency meets or exceeds certain contractual levels, the Debtors pay agency commissions in cash after the quarter in which the travel was sold. Certain agencies may opt to receive payment through Universal Air Travel Plan Agreement accounts, which are accounts affiliated with an airline-owned payment network accepted by thousands of merchants for air, rail, hotel, and travel agency payments.

30. The Debtors estimate that accrued but unpaid travel agency commissions (including commissions to general sales agents and third-party travel websites) for prepetition passenger ticket sales as of May 10, 2020 total approximately \$6.1 million. The Debtors request permission to pay these commissions as they become due in accordance with their normal prepetition practice. To sustain travel agency confidence, the Debtors must be able to assure their most productive travel agents that all prepetition commissions will be paid. It is imperative that the travel agencies continue to sell the Debtors' services to the traveling public. Collectively, travel agencies typically generate average monthly sales far in excess of the aggregate commissions they receive and, in this case, far in excess of the prepetition commissions which the Debtors are seeking to pay.

31. In addition, travel agencies often have claims against airlines for refunds made to various customers. These claims are processed by Airline Reporting Corporation ("ARC") for domestic travel agents and via bank settlement plans ("BSPs") for foreign travel agents. The industry utilizes a clearinghouse that remits monies owed to an airline from travel agencies and offsets such monies against the commissions owed to each travel agency. Neither ARC nor BSPs implement such setoff procedures in the case of an airline's bankruptcy. Instead, in the absence of relief from the section 362 stay, they may suspend setoffs that have not been processed as of the filing date.

32. For the fourth quarter of 2019, refunds processed through ARC and the BSPs were approximately 4% of total ticket sales. In the absence of setoffs, travel agencies (even those to whom the Debtors do not owe refunds as of the Petition Date) might not remit the full amount (or, in some case, any) of their receipts from postpetition sales. Allowing travel agencies to refund prepetition tickets in accordance with regular prepetition procedures will greatly reduce the risk

that travel agencies establish self-help reserves. Permitting limited setoffs will expedite the receipt of the proceeds of ticket sales generated by the travel agencies.

33. The Debtors request that the Court modify the automatic stay to the limited extent necessary to permit the travel agents, ARC, and BSPs to follow their normal setoff and processing procedures in respect of undisputed claims in the ordinary course as if no bankruptcy filing had occurred.

**I. Baggage/Service Claims**

34. The Debtors seek authority to continue making payments or providing travel credits to passengers in connection with claims regarding lost or damaged baggage or other service deficiencies that occurred prepetition and which are not covered by insurance. Making these payments or providing travel credits will allow the Debtors to continue to offer a fully competitive travel product.

**J. Tour Operators**

35. The Debtors provide air transportation that is sold together with ground arrangements, such as hotel accommodations or car rentals, as a total package to consumers through various independent tour operators. The use of tour operators as distributors of the Debtors' seats is particularly widespread in international sales. The tour operators sell these packages directly to consumers or through travel agents. These tour operators are an important part of the distribution chain of the Debtors' services.

36. Generally, the applicable travel agency creates a miscellaneous charge order ("MCO"), which is sent to the tour operator. The tour operator then bills the Debtors for the full amount of the MCO and pays the underlying service providers (*e.g.*, hotels, cruise lines, and car rental companies). This package tour process will break down if the Debtors are unable to honor prepetition MCOs presented for payment in the postpetition period. Travelers who are already on

tours might be stranded, some in remote destinations. Those travelers who have not yet embarked on their tours may be forced to cancel their trips, with concomitant inconvenience to the traveler, financial loss to the tour operators, and loss of confidence in the Debtors. The Debtors, therefore, seek authority to honor the MCOs as they become due, in accordance with the Debtors' normal prepetition procedures.

**K. Charter Flights**

37. The Debtors are party to many contracts to charter certain of their aircraft. These charter operations primarily cater to hotel chains and cruise ship companies. Additionally, the Debtors provide *ad hoc* charter services to travel agencies, sports teams, and corporate clients. The Debtors intend to continue these charter operations and seek authorization to honor any prepetition obligations with respect thereto. As of May 10, 2020, the approximate amount outstanding as to charter obligations was \$1.3 million.

**L. Cargo Settlement Agreements**

38. Certain of the Debtors provide air cargo services under agreements with cargo sales agencies. Charges for these services are either (i) invoiced directly to the cargo sales agencies, or (ii) cleared and settled through the Cargo Agency Settlement System ("CASS"). The cargo business is an important revenue source to the Debtors. In 2019, cargo sales accounted for almost 11.4% of the Debtors' operating revenues.

39. The Debtors' cargo sales are reported to the CASS in the relevant country, such as the Colombia and Ecuador CASS or the United States CASS. The Debtors are parties to agreements with the International Air Transport Association that facilitate their participation in CASS (collectively, the "Cargo Settlement Agreements"). The Cargo Settlement Agreements are part of the industry mechanism for settling charges relating to cargo shipments by and between carriers and cargo agencies. Cargo sales agencies may have claims against the Debtors for refunds

or overpayments. These claims are processed and cleared by CASS upon submission and approval of a “Cargo Correction Advice.” CASS then remits monies owed to the Debtors from each cargo sales agency or offsets the cargo sales agencies’ refund claims against monies owed to the Debtors.

40. The Debtors, therefore, request that the Court modify the automatic stay to the extent necessary to permit the cargo sales agencies to follow their normal setoff procedures in respect of undisputed obligations. Historically, refund and overpayment claims have been very low, constituting less than 0.2% of total air cargo sales. The Debtors expect the rate of refunds or overpayment claims in the postpetition period to remain substantially the same.

**M. Cargo Loyalty Program**

41. The Debtors have instituted a loyalty program known as Avianca Cargo Rewards Miles for the benefit of their largest corporate cargo customers (the “Cargo Loyalty Program”). The Cargo Loyalty Program provides these higher volume customers with rewards miles for each kilogram transported. The Debtors have more than 77 customers in the Cargo Loyalty Program who account for approximately 58% of the sales revenue generated by the Debtors’ cargo services. Customers in the Cargo Loyalty Program receive a monthly account status from the Debtors and can transfer some or all of the earned cargo rewards miles to a LifeMiles account.

42. Given the importance of the Debtors’ cargo business, the Debtors must continue honoring the Cargo Loyalty Program to keep providing their cargo customers with important loyalty incentives and remain competitive with other cargo carriers.

**N. Barter Arrangements**

43. The Debtors maintain certain barter arrangements with a number of organizations that provide a wide range of services and support to the Debtors’ operations in return for the Debtors providing air transportation. Such barter arrangements include arrangements between the

Debtors and vendors whereby the vendors are paid with vouchers for air travel in lieu of cash payments for goods and services provided to the Debtors.

44. The Debtors seek authority to continue to honor these barter arrangements, including with respect to prepetition obligations, to avoid the disruption of these important relationships and the loss of services that would result. The barter arrangements involve no significant cash outlays, and the amount of unredeemed air transportation obligations incurred pursuant to barter arrangements as of the Petition Date is not substantial. The Debtors estimate that as of April 30, 2020, the value of outstanding unredeemed air transportation obligations incurred pursuant to barter arrangements was approximately \$1.2 million.

**O. Credit Card Agreements**

45. Certain of the Debtors are parties to agreements (the "Credit Card Agreements") with credit card companies and processors (the "Credit Card Parties"), pursuant to which the Debtors accept credit card payments, subject to certain adjustments, returns, promotional and other fees, and refunds. A significant portion of the Debtors' revenue is generated through credit card purchases and charges. The Debtors are required to pay the Credit Card Parties fees for their services, certain of which may have accrued but remain unpaid as of the Petition Date.

46. Under the Credit Card Agreements, when a credit card customer is owed a refund or is dissatisfied with the goods and services and refuses to pay, or in the case of fraud or unrecognized charges, the Debtors must return, or "chargeback," to the credit card processor any funds received for these payments (the "Chargebacks"). Chargebacks are typically satisfied by a reduction of payments owing to the Debtors under the processing agreements. It is possible that certain Chargebacks incurred by the Debtors prior to the Petition Date may not have been fully netted out against credit card payments the Debtors received prior to the Petition Date. Moreover, it may be argued that Chargebacks arising after the Petition Date are prepetition obligations where

the transaction underlying the Chargeback occurred prepetition. In such circumstances, to the extent that the netting of the parties' obligations would not constitute recoupment, the setoff of Chargebacks against credit card payments may be foreclosed by the automatic stay imposed by section 362(a) of the Bankruptcy Code.

47. The Debtors' continued ability to honor and process credit card transactions is essential to the success of the Debtors' reorganization effort. Consumers take for granted the option to pay for flights by credit card. Without the ability to honor and process credit card transactions, the Debtors will not be able to offer this option to consumers and will lose their most significant method for conducting sales transactions. If the Debtors cannot offer consumers the option to pay by credit card, the Debtors will sell fewer flights for less money and their sales will be significantly impaired.

48. Accordingly, the Debtors seek authority, but not direction, to pay (i) all of their fees and other obligations owed to the Credit Card Parties and (ii) all Chargebacks, including all such fees, other obligations, and Chargebacks that were outstanding as of the Petition Date. The Debtors also request that the Court modify the automatic stay to the extent necessary to permit the netting of the Chargebacks.

#### **BASIS FOR RELIEF REQUESTED**

49. Maintaining public confidence in the Debtors' ability to provide reliable passenger and cargo transportation services at this critical juncture is paramount to the Debtors' reorganization efforts. The Debtors must take immediate active steps to preserve their loyal customer base world-wide and their fundamental business relationships with various travel agencies, corporate customers, distributors, cargo agencies, tour operators, Credit Card Parties, and other entities described above (collectively, the "Ordinary Course Counterparties"). The

Debtors seek authority to deal with the Ordinary Course Counterparties in accordance with their normal prepetition procedures, which will entail paying or honoring certain prepetition obligations.

50. An airline is a service business, and, as is the case with any service provider, goodwill is essential to its success. To protect their loyal customer base, which is one of the Debtors' most valuable assets, and to avoid business disruptions, the Debtors must preserve their valuable working relationships with the Ordinary Course Counterparties. Importantly, despite any contractual relationships, the Debtors' relationships with the Ordinary Course Counterparties are in most cases not exclusive, and thus, if the Debtors do not honor their prepetition obligations, the Ordinary Course Counterparties may seek relationships with other airlines. Accordingly, the Debtors must take all actions necessary to assure the Ordinary Course Counterparties that the Debtors will continue to meet their obligations. The Debtors' failure to obtain the authorization to do so would be detrimental to their business operations.

51. Notwithstanding the fact that the Debtors' passenger transport business has been grounded, the Debtors must obtain immediate authority to honor customer programs in order to avoid irreparable harm to their businesses. The Debtors' cargo transport business remains in full operation, and generally has not been subject to the travel restrictions imposed by various governments in the markets which the Debtors operate. Moreover, the Debtors also must continue to operate "ferry flights" of their passenger aircraft, which involve the repositioning and relocation of various passenger aircraft depending on aircraft parking and storage availability in various locations. The Debtors also continue to perform certain "lead time" operations in anticipation of a modest near-term resumption of passenger flights. Certain operations must be undertaken sufficiently in advance—such as aircraft maintenance, ticket sales, and ongoing flight training—to allow for passenger flights to timely resume when circumstances permit. The relief requested

herein is therefore necessary and appropriate to accomplish these goals and to protect against further diminution in the value of the Debtors' businesses.

**A. The Court Should Authorize Postpetition Payment of Prepetition Obligations to the Ordinary Course Counterparties**

52. Pursuant to sections 105(a) and 363 of the Bankruptcy Code and the “necessity of payment doctrine” established by case law, this Court has the authority to authorize the Debtors to pay and honor their obligations to the Ordinary Course Counterparties that accrued prepetition. See Miltenberger v. Logansport, Crawfordsville & Sw. Ry. Co., 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of . . . [indispensable] business relations”). Section 105(a) of the Bankruptcy Code provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); see Schwartz v. Aquatic Dev. Grp., Inc. (In re Aquatic Dev. Grp., Inc.), 352 F.3d 671, 680 (2d Cir. 2003) (“[I]t is axiomatic that bankruptcy courts are ‘courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.’”); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (recognizing the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment “is essential to the continued operation of the debtor”).

53. Section 363(b) provides that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Pursuant to section 363(b), a court may authorize a debtor to pay certain prepetition obligations. See, e.g., In re Ionosphere Clubs, 98 B.R. at 175. To approve the use of a debtor’s assets outside the ordinary course of business pursuant to section 363(b), a court must find that a “good business reason” exists for the use of such assets. See, e.g., Official Comm. of Unsecured Creditors of Enron Corp. v. Enron Corp. (In re Enron Corp.), 335 B.R. 22, 27-28 (Bankr. S.D.N.Y.

2005) (quoting In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983)). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

54. Furthermore, a debtor-in-possession operating a business has a fiduciary duty to protect and preserve the estate, including the going concern value of an operating business. See In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”); see also Unofficial Comm. of Equity Holders of Penick Pharm., Inc. v. McManigle (In re Penick Pharm. Inc.), 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“Specifically, in the case of an inanimate debtor in possession such as a corporation, the fiduciary duties born by a trustee for a debtor out of possession fall on the debtor’s directors, officers and managing employees . . . who have a duty to maximize the value of the estate . . . and who are burdened to ensure that the resources that flow through the debtor in possession’s hands are used to benefit the unsecured creditors and other parties in interest.” (citations omitted)).

55. The Debtors’ ability to pay their prepetition obligations to the Ordinary Course Counterparties is critical to the efficient and value-maximizing administration of the Debtors’ estates. The failure to pay these obligations when due may harm the Debtors’ estates in a number of ways. These obligations represent but a small percentage of the Debtors’ total prepetition debts, yet their satisfaction will contribute significantly to the Debtors’ revenue-generating capability. Payment of these obligations will enable the Debtors to maintain their crucial relationships with the Ordinary Course Counterparties and to continue to provide competitive services, thereby

preserving the confidence and goodwill of their customers. Without that support, the interests of all stakeholders will suffer immeasurably. Moreover, the Debtors only seek to pay Ordinary Course Counterparties where non-payment would lead to the disruption of the Debtors' businesses. Thus, the Debtors submit that the relief requested is narrowly tailored to facilitate the Debtors' chapter 11 reorganization process.

56. Furthermore, some of the Ordinary Course Counterparties have certain performance obligations to the Debtors (the "Performance Obligations") and/or provide credit and other favorable business terms (collectively, the "Acceptable Terms" and, together with the Performance Obligations, the "On-Going Obligations/Terms"). The Debtors request authority to condition any payments on account of prepetition obligations to these Ordinary Course Counterparties on their continuing to provide the Debtors with the On-Going Obligations/Terms. Accordingly, the Debtors propose that the Court enter an order providing that:

- a. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the Ordinary Course Counterparties on the condition that, by accepting payment, each Ordinary Course Counterparty agrees to maintain, reinstate, or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases;
- b. The acceptance of payment by an Ordinary Course Counterparty is deemed to be its acceptance of the terms of the Proposed Interim Order, and if the Ordinary Course Counterparty thereafter fails to provide the Debtors with, or otherwise comply with, the On-Going Obligations/Terms during the pendency of these cases, then any payments made to such Ordinary Course Counterparty after the Petition Date on account of a prepetition claim shall be deemed to be an unauthorized postpetition transfer, automatically recoverable by the Debtors; and
- c. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from the Ordinary Course Counterparties before making any payments authorized hereby; provided that the absence of such written verification shall not limit the Debtors' rights hereunder.

57. Courts in this District have regularly authorized the honoring of critical customer programs and practices in complex reorganizations, including in large chapter 11 cases involving airlines, where such payment is in the best interest of the estate and its creditors, and is critical to maintaining the debtor's operations. See, e.g., In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011); In re Delta Air Lines, Inc., Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005); and In re Northwest Airlines Corp., Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Oct. 7, 2005).

**B. The Court Should Authorize and Direct Banks and Other Financial Institutions to Honor and Pay Checks Issued and Make Other Transfers to Pay Ordinary Course Parties**

58. The Debtors request that the Court authorize and direct the Debtors' banks and other financial institutions at which the Debtors maintain disbursement accounts at the Debtors' direction, to receive, process, honor, and pay, to the extent of funds on deposit, any and all checks drawn or electronic fund transfers requested or to be requested by the Debtors in this Motion to Ordinary Course Parties and Credit Card Parties, whether those checks were presented prior to or after the Petition Date. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such obligations to replace any prepetition checks or electronic fund transfer requests that may be lost, dishonored, or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

**RESERVATION OF RIGHTS**

59. Nothing contained herein is intended to be or shall be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in interest's right to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not

intended to be and should not be construed as an admission to the validity of any claim or waiver of the Debtors' rights to dispute such claim subsequently.

**BANKRUPTCY RULE 6003 IS SATISFIED AND  
REQUEST FOR WAIVER OF STAY**

60. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

61. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001 . . . .

Fed. R. Bankr. P. 6003.

62. As described above, if the Debtors are not permitted to honor their prepetition obligations as described herein, it would cause immediate and irreparable harm to the Debtors' enterprise and operations by disenfranchising their loyal customer base. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm and, therefore, Bankruptcy Rule 6003(b) is satisfied.

63. The Debtors further seek a waiver of any stay of the effectiveness of an order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth above, the relief requested herein is essential to prevent immediate and irreparable damage to the

Debtors' operations, going concern value, and their efforts to pursue a resolution to these Chapter 11 Cases.

64. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rules 6003 and 6004(h).

**NOTICE**

65. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the forty (40) largest unsecured claims against the Debtors (on a consolidated basis); (c) the holders of the five (5) largest secured claims against the Debtors (on a consolidated basis); (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the Federal Aviation Administration; and (g) any party that requests service pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**NO PRIOR REQUEST**

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

*[Concluded on Following Page]*

**CONCLUSION**

WHEREFORE, the Debtors request that this Court enter an order, substantially in the form of the Proposed Interim Order, granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: New York, New York  
May 10, 2020

MILBANK LLP

*/s/ Evan R. Fleck*

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*Proposed Counsel for Debtors and  
Debtors-in-Possession*

**EXHIBIT A**

**Proposed Interim Order**

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

-----X  
In re: : Chapter 11  
: :  
AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup> : Case No. 20-11133 (MG)  
: :  
Debtors. : (Joint Administration Requested)  
: :  
-----X

**INTERIM ORDER PURSUANT TO SECTIONS 105(a) AND 363 OF THE  
BANKRUPTCY CODE (I) AUTHORIZING DEBTORS TO PAY OR HONOR  
PREPETITION OBLIGATIONS TO CUSTOMERS, TRAVEL AGENTS, CHARTER  
AND TOUR OPERATORS, AND CERTAIN OTHER BUSINESS ENTITIES;  
(II) MODIFYING AUTOMATIC STAY TO THE EXTENT NECESSARY  
TO EFFECTUATE ORDINARY COURSE SETOFFS WITH SUCH  
COUNTERPARTIES; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of an interim order (this “Interim Order”) pursuant to sections 105(a) and 363 of the Bankruptcy Code (i) authorizing (but not directing) the Debtors to pay or honor prepetition obligations to the Ordinary Course Counterparties, (ii) modifying the automatic stay to the extent necessary to effectuate setoffs with the Ordinary Course Counterparties, and (iii) granting certain related relief, all as described more fully in the Motion;

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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: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovias del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Isleña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis.
2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2020, at \_\_:\_\_.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2020, and shall be served on: (a) the Debtors; (b) proposed counsel to the Debtors; (c) counsel to any statutory committee appointed in these cases; and (d) the Office of the United States Trustee for the Southern District of New York. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to (i) pay, perform, and honor their obligations to the Ordinary Course Counterparties, as requested in the Motion, including but not limited to, those obligations arising before the Petition Date; and (ii) continue, renew, replace, and/or terminate, one or more of the programs and arrangements with the Ordinary Course Counterparties as they deem appropriate, in the ordinary course of business, without further application to the Court.

4. The Debtors are authorized, but not directed, to continue to receive, process, and honor credit card transactions and debit transactions and continue to pay processing and related fees to credit card companies, credit card processors, and debit service providers. The Debtors are further authorized, but not directed, to pay all Chargebacks along with the other fees related to credit card processing.

5. The automatic stay in effect in these cases pursuant to section 362 of the Bankruptcy Code is hereby modified to the extent necessary to permit (i) the travel agents, ARC, and BSPs to follow their normal setoff and processing procedures in respect of undisputed claims; (ii) the cargo sales agencies to follow their normal setoff procedures in respect of undisputed obligations; and (iii) the netting of the Chargebacks, in each case, in the ordinary course as if no bankruptcy filing had occurred. Notwithstanding entry of this Order, the Debtors' rights to enforce the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor who demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

6. The Debtors are authorized (but not required) to condition any payments on account of prepetition obligations to the Ordinary Course Counterparties on their continuing to provide the Debtors with the On-Going Obligations/Terms as follows:

- a. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the Ordinary Course Counterparties on the condition that, by accepting payment, each Ordinary Course Counterparty agrees to maintain, reinstate, or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases;
  - b. The acceptance of payment by an Ordinary Course Counterparty is deemed to be its acceptance of the terms of this Order, and if the Ordinary Course Counterparty thereafter fails to provide the Debtors with, or otherwise comply with, the On-Going Obligations/Terms during the pendency of these cases, then any payments made to such Ordinary Course Counterparty after the Petition Date on account of a prepetition claim shall be deemed to be an unauthorized postpetition transfer, automatically recoverable by the Debtors; and
  - c. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from the Ordinary Course Counterparties before making any payments authorized hereby; provided that the absence of such written verification shall not limit the Debtors' rights hereunder.
7. This Order shall not, however, be construed to limit, or in any way affect, the Debtors' ability to contest any claim, invoice, or other charge of any customer or another Ordinary Course Counterparty on any grounds.
8. All applicable banks and other financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks and electronic funds transfer requests from the Debtors' accounts to customers and/or the other Ordinary Course Parties, whether those checks were presented or funds transfer requests initiated prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.
9. Nothing contained in this Order shall constitute a rejection or assumption by the Debtors of any executory contract or unexpired lease by virtue of reference of any such contract or lease in the Motion.

10. Any payment made pursuant to this Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to dispute such obligation subsequently.

11. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

12. This Order is effective from the date of entry through this Court's disposition of the Motion on a final basis; provided that the Court's ultimate disposition of the Motion on the final basis shall not impair or otherwise affect any action taken pursuant to this Order.

13. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

14. Notwithstanding any applicability of Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

16. This Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2020

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

**Proposed Final Order**

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

-----X  
In re: : Chapter 11  
AVIANCA HOLDINGS S.A., *et al.*,<sup>1</sup> : Case No. 20-11133 (MG)  
Debtors. : (Joint Administration Requested)  
-----X

**FINAL ORDER PURSUANT TO SECTIONS 105(a) AND 363 OF THE BANKRUPTCY  
CODE (I) AUTHORIZING DEBTORS TO PAY OR HONOR PREPETITION  
OBLIGATIONS TO CUSTOMERS, TRAVEL AGENTS, CHARTER AND  
TOUR OPERATORS, AND CERTAIN OTHER BUSINESS ENTITIES;  
(II) MODIFYING AUTOMATIC STAY TO THE EXTENT NECESSARY  
TO EFFECTUATE ORDINARY COURSE SETOFFS WITH SUCH  
COUNTERPARTIES; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of a final order (this “Final Order”) pursuant to sections 105(a) and 363 of the Bankruptcy Code (i) authorizing (but not directing) the Debtors to pay or honor prepetition obligations to the Ordinary Course Counterparties, (ii) modifying the automatic stay to the extent necessary to effectuate setoffs with the Ordinary Course Counterparties, and (iii) granting certain related relief, all as described more fully in the Motion;

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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: Aero Transporte de Carga Unión, S.A. de C.V.; Aeroinversiones de Honduras, S.A.; Aerovias del Continente Americano S.A. Avianca; Airlease Holdings One Ltd.; Avianca Costa Rica S.A.; Avianca Holdings S.A.; Avianca, Inc. (13-1868575); Avianca Leasing, LLC (46-2586415); Avianca Perú S.A.; Avianca-Ecuador S.A.; Aviateca, S.A.; Avifreight Holding Mexico, S.A.P.I. de C.V.; Grupo Taca Holdings Limited; International Trade Marks Agency Inc.; Inversiones del Caribe, S.A.; Isleña de Inversiones, S.A. de C.V.; Latin Airways Corp.; Latin Logistics, LLC (00-0107425); Regional Express Américas S.A.S.; Ronair N.V.; Taca de Honduras, S.A. de C.V.; Taca International Airlines S.A.; Taca S.A.; Tampa Cargo S.A.S.; AV International Holdco S.A.; AV International Holdings S.A.; AV International Investments S.A.; AV International Ventures S.A.; AV Investments One Colombia S.A.S.; AV Investments Two Colombia S.A.S.; AV Taca International Holdco S.A.; Servicios Aeroportuarios Integrados SAI S.A.S. The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED and approved in all respects.
2. The Debtors are authorized, but not directed, to (i) pay, perform, and honor those obligations to their customers, Ordinary Course Parties as requested in the Motion, including but not limited to, those obligations arising before the Petition Date, and (ii) continue, renew, replace, and/or terminate, one or more of the programs with customers or arrangements with the Ordinary Course Parties as they deem appropriate, in the ordinary course of business, without further application to the Court.
3. The Debtors are authorized, but not directed, to continue to receive, process, and honor credit card transactions and debit transactions and continue to pay processing and related

fees to credit card companies, credit card processors, and debit service providers. The Debtors are further authorized, but not directed, to pay all Chargebacks along with the other fees related to credit card processing.

4. All applicable banks and other financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts to customers and/or the other Ordinary Course Parties, whether those checks were presented prior to or after the Petition Date, and make other transfers provided that sufficient funds are available in the applicable accounts to make the payments.

5. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the Ordinary Course Parties on the condition that by accepting payment, the Ordinary Course Parties agree to maintain, reinstate, or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases.

6. Ordinary Course Parties' acceptance of payment is deemed to be acceptance of the terms of this Order, and if the Ordinary Course Party thereafter does not provide the Debtors with, or otherwise comply with, On-Going Obligations/Terms during the pendency of these cases, then any payments of prepetition claims made after the Petition Date will be deemed to be unauthorized postpetition transfers and automatically recoverable by the Debtors in their discretion.

7. The Debtors are authorized, but not required, to obtain written verification of On-Going Obligations/Terms from the Ordinary Course Parties before issuing payment hereunder; provided however, that the absence of such written verification shall not limit the Debtors' rights hereunder.

8. This Order shall not, however, be construed to limit, or in any way affect, the Debtors' ability to contest any claim, invoice, or other charge of any customer and/or other Ordinary Course Party on any grounds.

9. The stay imposed by section 362 of the Bankruptcy Code may be, and hereby is, modified solely to the limited extent necessary to permit (1) the travel agencies, ARC, and BSPs to follow their normal setoff and processing procedures in accordance with the terms and conditions of their contracts in respect of undisputed obligations owing to such person; and (2) Cargo Sales Agencies or other similar agencies to follow their normal setoff procedures in respect of undisputed obligations owing to such person.

10. Nothing contained in this Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors-in-possession, of any executory contract or unexpired lease by virtue of reference to any such contract or lease in the Motion.

11. Any payment made pursuant to this Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to dispute such obligation subsequently.

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

13. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

14. Notwithstanding any applicability of Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

16. This Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2020

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UNITED STATES BANKRUPTCY JUDGE