

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. : (Jointly Administered)

:

-----X

ORDER ESTABLISHING PROCEDURES FOR REMOTE EVIDENTIARY HEARING ON JULY 15, 2020 IN CONNECTION WITH DEBTOR’S MOTION FOR AN ORDER GRANTING FINAL RELIEF WITH RESPECT TO CONTESTED MOTION

The Court will hold a hearing at **10:00 am, July 15, 2020 (EST)** with respect *only* to the following contested motion filed by Debtors’ counsel: (1) Final hearing on motion to pay wages, compensation and employee benefits, to the extent not approved at the hearing on June 11, 2020 (ECF Doc. ## 3, 35 and 222) (the “Contested Matter”). The Court having determined that issues of fact are appropriate for adjudication, this Contested Matter is scheduled for a hearing beginning at

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



10:00 AM, July 15, 2020 (EST) (the “Hearing”). Pursuant to Rule 43(a) of the Federal Rules of Civil Procedure, made applicable here by Rule 9017 of the Federal Rules of Bankruptcy Procedure, the current COVID-19 pandemic provides good cause in compelling circumstances to allow this Hearing to be conducted remotely using audio and video conferencing solutions. Accordingly, pursuant to this Court’s General Order M-543 regarding the COVID-19 pandemic, and after due deliberation, this Court adopts the following virtual hearing procedures which provide appropriate safeguards in relation to the Hearing of this Contested Matter.

IT IS HEREBY ORDERED THAT:

1. **Audio and Videoconferencing Solutions.** The Hearing shall take place virtually using both audio and videoconferencing solutions as set forth herein. The Court shall utilize Zoom for Government (for audio and video purposes). The Zoom link shall be provided by the Court to the list of persons identified by the Parties as Zoom participants in accordance with Section 2 below, and to other attorneys, parties in interest or members of the public who provide notice to the Court in accordance with Section 3 below. All counsel who participate via Zoom shall participate in appropriate pre-Hearing testing of Zoom as may be required by this Court’s personnel.

2. **Prior Notice of Intent to Zoom.** The Debtors’ counsel shall provide the Court with a list of all *attorneys* who will be heard with respect to the Contested Matter (including the attorneys’ first and last names, affiliation, party represented, telephone number and email address) and *witnesses* (including first and last names, title(s), affiliation, phone number and email address) who will be heard during the Hearing via Zoom *by no later than 12:00 noon, July 14, 2020*. Anyone who is connecting to the Hearing by telephone must provide the Court with the telephone number that will be used to connect to the Hearing along with the first and last names of the participant. The Court will circulate by email prior to the Hearing the Zoom link to such persons.

3. Attendance at the Hearing by Other Attorneys, Parties in Interest and the Public.

All other attorneys, parties in interest, or members of the public who wish to hear or observe the July 15, 2020 Hearing shall send an email to Chambers (mg.chambers@nysb.uscourts.gov) on or before 5:00 p.m., July 13, 2020. If you are connecting by telephone, you must provide the Court with the telephone number that will be used to connect and the first and last names of each person who will connect. To avoid multiple appearances at the hearing, parties will join with one device only. The Court will circulate by email prior to the Hearing the Zoom link to such persons who wish to hear or observe the Hearing via Zoom.

3. Submission of Exhibits to Court. With respect to the Contested Matter, absent further order of the Court for good cause shown, only counsel for (1) the Debtors, (2) the Creditors Committee, and (3) the United States Trustee may offer evidence, argue and otherwise be heard with respect to the Contested Matter. If any of these parties intend to offer any exhibit at the hearing on July 15, 2020, such party shall provide the Court (and file on ECF) a copy of the exhibits it will seek to use during the Hearing (either by offering it in evidence or using it for demonstrative purposes) no later than 5:00 p.m., July 13, 2020. Any other exhibit or demonstrative that such parties may use at the Hearing for any purpose, including for rebuttal or impeachment, must be submitted via email by the offering party to the Court (at mg.chambers@nysb.uscourts.gov) and the other parties in .pdf format no later than 12:00 noon, July 14, 2020.

4. Submission of Witness Lists to the Court. On or before 12:00 noon, July 14, 2020, any party intending to call a witness to testify at the Hearing (either by affidavit, declaration or with live witness testimony) shall file a list of witnesses (the "Witness List") on ECF that the party anticipates in good faith calling as witnesses at the Hearing. The Witness List shall include the name, title, and business affiliation of each witness. For purposes of the July 15 Hearing, any party

that intends to offer in evidence at the Hearing an affidavit or declaration that has already been filed in support of, or opposition to, the relief sought in any pending motion shall seek a stipulation of admissibility of the affidavit or declaration from any party that has been authorized by this Order to be heard at the Hearing with respect to the Contested Matter. The declarant must be available via Zoom for cross examination and redirect examination, to the extent permitted by law. For any witness for whom an affidavit or declaration has not previously been filed on ECF, but who is expected to be called as a witness at the Hearing, the witness list shall also include a brief narrative summary of the expected direct testimony.

5. Remote Witness Testimony. Rule 43(a) of the Federal Rules of Civil Procedure, made applicable by Rule 9017 of the Federal Rules of Bankruptcy Procedure, provides that for “good cause in compelling circumstances” a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. The Court finds and concludes that good cause in compelling circumstances exist here due to the COVID-19 pandemic, any witness called to testify at the Hearing shall testify by contemporaneous transmission from a different location than the Courtroom (“Remote Witness”). All Remote Witnesses shall be sworn in over Zoom, and such testimony will have the same effect as if such Remote Witness was sworn in person in open court at the courthouse. In the event of an error or malfunction with Zoom, the Remote Witness may be sworn in and testify via the dial-in number included in the Zoom invitation. The Party offering the Remote Witness shall be responsible for ensuring that the Zoom link, and *all exhibits from all parties* are supplied to the Remote Witness in hard copy prior to, or in the case of impeachment exhibits, at the Hearing. No person other than counsel may be present in the room from which the Remote Witness will testify during the testimony of the Remote Witness. While the Remote Witness is testifying, he or she may not have in the room from which the Remote Witness

will testify any documents except his or her declaration submitted in lieu of direct testimony and all exhibits from all parties submitted to the Court pursuant to Section 4 above.

6. Courtroom Formalities. Although being conducted using audio and videoconferencing solutions, the Hearing of the Contested Matters constitutes a court proceeding, and any recording other than the official court version is prohibited. No Party may record images or sounds from any location. When called to testify, a Remote Witness must situate himself or herself in such a manner as to be able to view the video screen and be seen by the Court. For purposes of this Hearing, the formalities of a courtroom must be observed, *except* that the Court will permit counsel or witnesses participating in this Hearing to be attired in business casual clothing.

7. Checking in for Hearing. Because of the large number of expected participants in the Hearing, and the Court's security requirements for participating in a Zoom for Government audio and video hearing, all persons seeking to attend the 10:00 AM, July 15, 2020 (EST) Hearing must connect to the Hearing beginning at 9:30 a.m., July 15, 2020 (EST). When parties sign into Zoom for Government and add their names, they need to type in the first and last name that will be used to identify them at the hearing. Parties that type in only their first name, a nickname or initials will not be admitted into the hearing. When seeking to connect for either audio or video participation in a Zoom for Government hearing, you will first enter a "Waiting Room," in the order in which you seek to connect. Court personnel will admit each person to the Hearing from the Waiting Room after confirming the person's name (and telephone number, if a telephone is used to connect) provided to the Court in accordance with Sections 2 and 3, above. Because of the large number of expected participants, you may experience a delay in the Waiting Room before you are admitted to the Hearing.

7. Retention of Jurisdiction. This Court retains jurisdiction with respect to all matters arising from or related to this Order.

Dated: June 26, 2020
New York, New York

/s/ **Martin Glenn**
Martin Glenn
United States Bankruptcy Judge