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**Hearing Date & Time: July 17,
2020 at 2:00 p.m. (prevailing
Eastern Time)**

**Objection Deadline: July 17,
2020 at 2:00 p.m. (prevailing
Eastern Time)**

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

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In re:

:

Chapter 11

:

AVIANCA HOLDINGS S.A., *et al.*,

:

Case No. 20-11133 (MG)

:

Debtors.¹

:

(Jointly Administered)

:

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AVIANCA HOLDINGS S.A., *et al.*,

:

:

Plaintiffs.

:

v.

:

Adv. Proc. _____

:

G4S FACILITY MANAGEMENT CIA. LTDA.

:

And G4S SECURE SOLUTIONS

:

INTERNATIONAL INC.,

:

:

Defendants.

:

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



**NOTICE OF HEARING ON DEBTORS' MOTION
FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

PLEASE TAKE NOTICE that a hearing will be held at **2:00 p.m. (prevailing Eastern Time) on July 17, 2020** before the Honorable Martin Glenn, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004 to consider *Debtors' Motion for Temporary Restraining Order and Preliminary Injunction* (the "Motion").

PLEASE TAKE FURTHER NOTICE that, in accordance with General Order M-543 dated March 20, 2020, the Hearing will be conducted telephonically. Any parties wishing to participate must do so telephonically through CourtSolutions (www.court-solutions.com). Instructions to register for CourtSolutions LLC are attached to General Order M-543. Any objections or responses to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York, and the Case Management Order; (c) be filed electronically with this Court on the docket of *In re Avianca Holdings S.A.*, Case 20-11133 (MG) by registered users of this Court's electronic filing system and in accordance with the General Order M-399 (which is available on this Court's website at <http://www.nysb.uscourts.gov>); and (d) be served so as to be actually received by **July 17, 2020, at 2:00 p.m., prevailing Eastern Time**, by: (i) the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (ii) the Debtors, c/o Avianca Holdings S.A., Avenida Calle 26 # 59 – 15 Bogotá, Colombia (Attn: Richard Galindo); (iii) Milbank LLP, 55 Hudson Yards, New York, New York

10001 (Attn: Evan R. Fleck, Esq. and Gregory A. Bray, Esq.), proposed counsel for the Debtors; (iv) William K. Harrington, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Brian Masumoto, Est. and Greg Zipes, Esq.); (v) the Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549; (vi) the Federal Aviation Administration, 800 Independence Ave., S.W. Washington, DC 20591 (Attn: Office of the Chief Counsel); and (vii) Morrison & Foerster LLP, 250 West 55th Street New York, NY 10019 (Attn. Brett H. Miller, Esq., Todd M. Goren, Esq. and Erica J. Richards, Esq.), proposed counsel for the Official Committee of Unsecured Creditors.

PLEASE TAKE FURTHER NOTICE that copies of the Motion and other pleadings for subsequent hearings may be obtained free of charge by visiting the KCC website at <http://www.kccllc.net/avianca>. You may also obtain copies of any pleadings by visiting at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that *your rights may be affected*. You should read the Motion carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult with one.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned thereafter from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a later hearing.

PLEASE TAKE FURTHER NOTICE that you need not appear at the Hearing if you do not object to the relief requested in the Motions.

PLEASE TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your view on the Motion, then you or your attorney must attend the Hearing. If you or your attorney do not take these steps, the Court

may decide that you do not oppose the relief sought in the Motion and may enter orders granting the relief requested in the Motion with no further notice or opportunity to be heard.

New York, New York
Dated: July 14, 2020

/s/ Alan Stone
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**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., <i>et al.</i> ,	: Case No. 20-11133 (MG)
	: :
Debtors. ²	: (Jointly Administered)
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AVIANCA HOLDINGS S.A., <i>et al.</i> ,	: :
	: :
Plaintiffs.	: :
v.	: :
	: Adv. Proc. _____
G4S FACILITY MANAGEMENT CIA. LTDA.	: :
And G4S SECURE SOLUTIONS	: :
INTERNATIONAL INC.,	: :
	: :
Defendants.	: :
-----X	

² The Debtors in these cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. 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.

**DEBTORS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiffs, the debtors and debtors-in-possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) respectfully move this Court (the “Motion”) pursuant to sections 362 and 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and rule 7065 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), for entry of a temporary restraining order and preliminary injunction enjoining the defendants G4S Facility Management Cia. Ltda. and G4S Secure Solutions International Inc. (together, “G4S” or the “Defendants”) from taking any action in furtherance of their efforts to collect prepetition amounts from the Debtors. In support of the Motion, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. By this motion, Debtors seek to stop the Defendants’ continuing and threatened violations of the automatic stay and the consequent effects on the Debtors’ efforts to reorganize.
2. On May 10, 2020 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
3. On November 19, 2018, the Debtors entered into a Facility Management Services Contract (as amended from time to time, the “Facility Agreement”) with G4S. Pursuant to the Facility Agreement, G4S provided certain cleaning, repair, maintenance and fumigation services to the Debtors at various facilities in Ecuador. As of the Petition Date, G4S contends that Avianca owed it approximately \$143,000 under the Facility Agreement.
4. Following the Petition Date, and after the repeated provision of notice to G4S regarding the existence of the automatic stay, G4S made numerous attempts to collect on its prepetition claim. Among other things, G4S has, in turn, unilaterally withheld performance under

the Facility Agreement; terminated the Facility Agreement; instituted local mediation proceedings; and, most recently, threatened to formally institute litigation and seek attachment of the Debtors' bank accounts in Ecuador.

5. Contemporaneous herewith, the Debtors have filed a Complaint seeking, *inter alia*, an order preliminarily and permanently enjoining G4S from undertaking or continuing the foregoing conduct. Because G4S has indicated that it will imminently institute litigation and seek to attach the Debtors' bank accounts in Ecuador, the Debtors seek prompt entry of the requested relief to preserve the *status quo* pending further consideration of this adversary proceeding by the Court.

RELIEF REQUESTED

6. By this Motion, the Plaintiffs respectfully seek, pursuant to sections 362 and 105(a) of the Bankruptcy Code and rule 7065 of the Bankruptcy Rules: (i) entry of an order, substantially in the form attached hereto as **Exhibit A**, temporarily restraining G4S, together with its affiliates, agents, attorneys, representatives and employees, from (a) commencing or continuing any judicial, administrative or other action or proceeding against the Debtors related to its alleged prepetition claim; (b) undertaking any efforts to recover or collect on its alleged prepetition claim, or (c) seeking to seize, control or otherwise possess property of the Debtors' estates on any basis; (ii) entry of a preliminary injunction, substantially in the form attached hereto as **Exhibit B**, enjoining G4S from taking any of the foregoing actions pending outcome of this adversary proceeding; and, (iii) such other and further relief as the Court may deem just and proper.

7. This Motion and the relief requested herein is supported by the *Declaration of Richard Galindo in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction* (the "Galindo Declaration"), attached hereto as **Exhibit C**.

JURISDICTION AND VENUE

8. This Court has jurisdiction to consider this matter pursuant to 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.

9. Pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure, the Debtors consent to the entry of a final order or judgment by this Court.

10. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

11. The Debtors operate an extensive network of airline 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. 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.

13. On May 10, 2020, the Petition Date, the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their properties and continue to operate and manage their businesses as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108. The Debtors' cases are being 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].

14. On May 12, 2020, the Court entered an *Order (I) Enforcing the Protections of 11 U.S.C. §§ 362, 365, 525 and 541(c); (II) Approving the Form and Manner of Notice; and (III) Granting Related Relief* [Docket No. 46] (the “Automatic Stay Order”), which restates and reinforces the protections afforded to debtors by sections 362 and 365 of the Bankruptcy Code.

15. In the ordinary course of business, the Debtors rely on an extensive network of vendors and suppliers, whose continued service is essential to the reliability of the Debtors’ restructuring efforts and operations. G4S was one such vendor. Pursuant to the Facility Agreement, G4S provided cleaning, repair, maintenance and fumigation services to the Debtors at their ticket offices, administrative offices and certain other airport facilities in Ecuador. G4S’s services were of particular importance to the Debtors, as they have been working to resume their operations in Ecuador. (Galindo Decl. ¶ 10). This initiative continues to represent a key component of the Debtors’ early stage restructuring efforts and a crucial source of cash flows. (Galindo Decl. ¶ 11).

16. On May 12, 2020, two days after the Petition Date, G4S notified certain Avianca employees of its intention to suspend performance under the Facility Agreement unless and until its prepetition claim is paid in full. (Galindo Decl. ¶ 6). The Debtors promptly responded to these communications with a letter (the “First Notice”) dated as of May 18, 2020, detailing the relevant effects of sections 362 and 365 of the Bankruptcy Code, and attaching the Automatic Stay Order. (Galindo Decl. ¶ 7). The letter was prepared by counsel in English and translated by Avianca into Spanish prior to delivery. A true and correct copy of the English language letter is attached hereto as **Exhibit D**.

17. On or about June 3, 2020, G4S sent a “contract termination notice” to Avianca (the “Termination Notice”), which (i) acknowledges the Debtors’ chapter 11 filing, (ii) details certain outstanding prepetition amounts owed to G4S under the Facility Agreement, and (iii) purports to (x) terminate the contract on 90-days’ notice and (y) prior to such termination, suspend performance under the Facility Agreement, each on account of the prepetition amounts outstanding. Importantly, the Termination Notice provides that services would not be suspended if Avianca promptly satisfied a portion of G4S’s alleged prepetition claim. (Galindo Decl. ¶ 8). A true and correct certified English translation of the Termination Notice is attached hereto as **Exhibit E**.

18. Six days after delivery of the Termination Notice, and following numerous good faith attempts by counsel and certain Avianca employees to resolve the dispute, Avianca delivered a second letter (the “Second Notice”), dated as of June 9, 2020. (Galindo Decl. ¶ 9). The Second Letter reiterates the automatic stay’s broad protections and explicitly notifies G4S of the need for its services in connection with Avianca’s immediate resumption of operations in Ecuador. A true and correct copy of the Second Notice is attached hereto as **Exhibit F**.

19. In spite of the First Notice and Second Notice, and with explicit knowledge of the Automatic Stay Order, G4S continued to withhold performance under the Facility Agreement. As such, and in light of the then-imminent resumption of their Ecuadorian operations, the Debtors were compelled to secure an alternative services provider. (Galindo Decl. ¶ 12).

20. On or about June 29, 2020 the Debtors were notified of G4S’s demand for a mediation hearing before The Center of Arbitration and Mediation of the Chamber of Commerce of Quito, Ecuador, concerning its alleged prepetition claim. (Galindo Decl. ¶ 13).

21. On July 2 and 8, 2020, the same authority conducted the requested mediation hearing in two separate sessions. At the hearing, G4S stated its intention to formally commence litigation in Ecuador against the Debtors and to seek attachment of the Debtors' local bank accounts. (Galindo Decl. ¶¶ 14, 15). In light of the recommencement of operations in Ecuador, the threatened litigation and risk of G4S attaching the Debtors' local operating accounts poses a dire threat to the their most significant source of revenues from passenger flights at this time. (Galindo Decl. ¶ 11).

BASIS FOR RELIEF

I. The Court has Authority to Grant the Injunctive Relief Requested in this Motion

22. Section 105(a) of the Bankruptcy Code provides that "[t]he 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). Under section 105(a) of the Bankruptcy Code, courts are empowered to enjoin any and all actions that may adversely affect the debtor's assets or estate. *N. Star Contracting Corp. v. McSpedon (In re North Star Contracting Corp.)*, 125 B.R. 368, 370 (S.D.N.Y. 1991).

23. Generally, a showing of irreparable harm is "the most important prerequisite for injunctive relief". *O'Toole v. Wrobel (In re Sledziejowski)*, 533 B.R. 408, 425 (Bankr. S.D.N.Y. 2015). Indeed, temporary restraining orders are "characteristically issued in haste . . . to forestall irreparable harm". *Romer v. Green Point Savings Bank*, 27 F.3d 12, 16 (2d Cir. 1994); *See also* F.R.C.P. 65(b)(1); *Official Comm. of Unsecured Creditors v. PSS S.S. Co. (In re Prudential Lines, Inc.)*, 107 B.R. 832, 835 (Bankr. S.D.N.Y. 1989) (granting temporary restraining order where moving party established "summary showing of its necessity in order to prevent immediate and irreparable injury"), *aff'd*, 119 B.R. 430 (S.D.N.Y. 1990), *aff'd*, 928 F.2d 565 (2d Cir. 1991). However, in the Second Circuit the "usual grounds for injunctive relief such as irreparable injury need not be shown in a proceeding for an injunction under section 105(a) [of the Bankruptcy Code]." *LTV Steel Comp., Inc. v. Bd. of Educ. (In re Chateaugay Corp., Reomar, Inc.)*, 93 B.R.

26, 29 (S.D.N.Y. 1988); *See also Lyondell Chem. Co. v. Centerpoint Energy Servs., Inc. (In re Lyondell Chem. Co.)*, 402 B.R. 571, 590 (Bankr. S.D.N.Y. 2009); *Ball v. Soundview Composite Ltd. (In re Soundview Elite Ltd.)*, 543 B.R. 78, 120 (Bankr. S.D.N.Y. 2016); *C & J Clark Amer., Inc. v. Carol Ruth, Inc. (In re Wingspread Corp.)*, 92 B.R. 87, 92 (Bankr. S.D.N.Y. 1988) ("The usual grounds for injunctive relief such as irreparable injury need not be shown in a proceeding for an injunction under section 105(a) [of the Bankruptcy Code].") (citing Chateaugay) (additional citations omitted).

24. Rule 65 of the Federal Rules of Civil Procedure governs the provision of injunctive relief in the federal courts. Bankruptcy Rule 7065 makes F.R.C.P. 65 generally applicable to this adversary proceeding. Bankruptcy Rule 7065, in turn, specifically allows this Court to issue a temporary restraining order without complying with subsection (c) of F.R.C.P. 65, which otherwise requires the provision of security by the moving party.

25. As such, Bankruptcy Rule 7065 eliminates the requirement to post security or a bond in connection with this proceeding. *Lyondell Chem. Co. v. CenterPoint Energy Gas Servs. (In re Lyondell Chem. Co.)*, 402 B.R. 571, 595 (Bankr. S.D.N.Y. 2009) (holding that the effect of Bankruptcy Rule 7065 is to make the requirement to post security or a bond "optional, rather than mandatory," and declining to require posting of a bond where the brief duration of the injunction, coupled with available safeguards, meant chances of the defendants suffering injury were remote). Here, the limited duration of the requested relief and patently improper nature of the conduct being enjoined undercut the necessity of posting a bond or security.

26. In the chapter 11 context, courts in this Circuit have broad authority under section 105(a) of the Bankruptcy Code and Bankruptcy Rule 7065 to enjoin actions that would detrimentally affect the bankruptcy estate or impair a debtor's ability to reorganize. *See, e.g., In*

re Johns-Manville Corp., 40 B.R. 219, 226 (Bankr. S.D.N.Y. 1984) (holding that “[i]n the exercise of its authority under § 105, the Bankruptcy Court may use its injunctive authority to ‘protect the integrity of a bankrupt’s estate and the Bankruptcy Court’s custody thereof.’”) (quoting *In re Northern Boneless Meat Corp.*, 9 B.R. 27, 29 (S.D.N.Y. 1981)). Section 105(a) contemplates injunctive relief in “precisely those instances where parties are attempting to obstruct the reorganization.” *In re Johns-Manville Corp.*, 52 B.R. 879, 889 (Bankr. S.D.N.Y. 1985). More specifically, pursuant to section 105(a) of the Bankruptcy Code, courts are empowered to enjoin any and all lawsuits against a debtor “if they threaten to thwart or frustrate the debtor’s reorganization efforts.” *See In re Adelphia Commc’ns Corp.*, 302 B.R. 439, 448 (S.D.N.Y. 2003); *In re The 1031 Tax Group*, 397 B.R. 670, 684 (S.D.N.Y. 2008). Here, a temporary restraining order and preliminary injunction are plainly necessary to prevent continued violations of the automatic stay and the attachment of particularly crucial estate property. Both the Bankruptcy Code and applicable equities call for freedom to constructively utilize estate resources toward the Debtors’ reorganization efforts. G4S’s desire to prematurely collect on its prepetition claim should not stand in the way of that mandate.

II. Entry of a Temporary Restraining Order and Preliminary Injunction is Necessary to Avoid Immediate & Irreparable Harm

27. At this crucial stage of these Chapter 11 Cases, entry of the requested relief is also necessary to prevent ongoing irreparable harm. The COVID-19 pandemic has grounded the Debtors’ passenger operations throughout the globe and, in turn, taken away the Debtors’ most significant source of revenue. Recently, the Ecuadorian national government lifted restrictions on air travel, presenting a valuable opportunity for the Debtors to begin flying to and from various locations in one of their most important geographical markets. The Debtors have been working

diligently to effect a prompt resumption of operations in Ecuador. Indeed, this initiative represents an integral component of the Debtors' early-stage restructuring efforts.

28. In addition to withholding performance under the Facility Agreement at this crucial juncture, G4S is now threatening to file a lawsuit against the Debtors and to seek attachment of their operating accounts in Ecuador. As the Debtors use these accounts to fund local payroll, pay critical vendors and generally support the entirety of their local operations, the implications of the Defendants' threat are grave. (Galindo Decl. ¶ 16). Simply put, without prompt entry of the requested relief, the Debtors' efforts to resume operations in Ecuador would be severely and immediately jeopardized, putting them at a permanent competitive disadvantage vis-à-vis their regional counterparts.

29. G4S's conduct threatens to wrest away control of estate property, hamper the Debtors' regional recovery, and embroil the Debtors' in costly and distracting foreign litigation. Courts in this district have plainly concluded that interference with the Debtors' rights under the Bankruptcy Code, in a manner such as this, constitutes irreparable harm. *See In re Ackerman*, 28 B.R. 509, 512 (Bankr. S.D.N.Y. 1983) (finding a debtor would be irreparably harmed if a creditor obtained control of his bank account by "depriving him of [] rights afforded by the Code"). Indeed, it is axiomatic that the chapter 11 regime is intended to facilitate a successful emergence from bankruptcy protection by, among other things, providing debtors with "the breathing room" to "make a fresh start." *In re Residential Capital, LLC*, 480 B.R. 529, 537 (Bankr. S.D.N.Y. 2012). To that end, bankruptcy courts are empowered to ensure that debtors are availed of "all of the rights and benefits to which they are entitled under the Bankruptcy Code". *In re Schuessler*, 386 B.R. 458, 491 (Bankr. S.D.N.Y. 2008) (finding that a creditor's actions "st[ood] in the way of important rights afforded to debtors under the Bankruptcy Code, including the right to the

protection of the automatic stay”). The Defendants’ conduct unambiguously threatens the Debtors’ ability to get their restructuring efforts off the ground, such that injunctive relief is “necessary to preserve or protect the [Debtors’] estate[s] or reorganization prospects.” *In re Lyondell Chem. Co.*, 402 B.R. at 590.

30. G4S, as an ostensible prepetition claim holder, should not be permitted to circumvent the mandates of the Bankruptcy Code. Absent relief enjoining the Defendants’ conduct, not only will the Debtors suffer irreparable harm, but so will their myriad stakeholders, the majority of whom are lawfully awaiting treatment of their prepetition claims.

III. The Remaining Factors for Entry of a Preliminary Injunction are Satisfied

31. A plaintiff seeking a preliminary injunction must make a showing of “(1) irreparable harm in the absence of the injunction and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the movant’s favor.” *NXIVM Corp. v. Ross Inst.*, 364 F.3d 471, 476 (2d Cir. 2004); *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund, Ltd.*, 598 F.3d 30, 35-36 (2d Cir. 2010) (upholding the validity of this standard and detailing the requirements of the “serious questions” alternative); *Adelphia Commc’ns Corp. v. Rigas (In re Adelphia Commc’ns Corp.)*, 323 B.R. 345, 373 (Bankr. S.D.N.Y. 2005) (finding this standard well-established in the Second Circuit). The foregoing “serious questions” alternative offers leeway to grant a preliminary injunction “in situations where [the Court] cannot determine with certainty that the moving party is more likely than not to prevail” and provides “flexibility in the face of varying factual scenarios and the greater uncertainties inherent at the outset of particularly complex litigation”. *VCG Special Opportunities Master Fund*, 598 F.3d at 36.

32. Although a showing of irreparable harm is typically “the most important prerequisite for injunctive relief,” *O’Toole v. Wrobel (In re Sledziejowski)*, 533 B.R. 408, 425 (Bankr. S.D.N.Y.

2015), “[t]he decision to grant or to deny a preliminary injunction depends in part on a flexible interplay’ between the likelihood of success and irreparable harm.” *XL Specialty Ins. Co. v. Level Glob. Inv’rs, L.P.*, 874 F. Supp. 2d 263, 270-71 (S.D.N.Y. 2012) (quoting *Packard Instrument Co. v. ANS, Inc.*, 416 F.2d 943, 945 (2d Cir. 1969)). “Accordingly, a clear likelihood of success on the merits requires a relatively lesser showing of harm.” *Greenlight Capital, L.P. v. Apple, Inc.*, No. 13-Civ-900 (RJS), 2013 WL 646547, at *8 (S.D.N.Y. Feb. 22, 2013). The proper function of a preliminary injunction is “to preserve the status quo between the parties pending final determination of the merits of the action.” *In re W. T. Grant Co.*, 6 B.R. 762, 765 (Bankr. S.D.N.Y. 1980) (quoting *Diversified Mortg. Inv’rs v. U. S. Life Title Ins. Co.*, 544 F.2d 571, 576 (2d Cir. 1976)).

33. As detailed in Section II herein, the risk of immediate and irreparable harm here is significant. G4S’s actions not only promise to drain estate resources at this crucial stage of the Debtors’ reorganization, but also threaten to derail their operational initiatives in Ecuador. The Debtors’ cash position and ability to reorganize should not be jeopardized in favor of permitting a prepetition trade creditor to freely pursue collection of its claims outside of this forum.

34. The Debtors’ likelihood of success on the merits is similarly clear and convincing, obviating a need to consider the otherwise applicable “serious questions” alternative. Indeed, this litigation is not complex. After exhausting all efforts to secure to a consensual resolution, the Debtors, out of necessity, are seeking to put an end to G4S’s repeated and straightforward violations of the automatic stay.

35. Section 362(a) of the Bankruptcy Code provides that “a petition filed under section 301, 302, or 303 of this title...operates as a stay, applicable to all entities, of:

(1) the commencement or continuation...of a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced

before the commencement of a case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;...(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;...(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.” 11 U.S.C. 362(a).

36. The foregoing provisions are extremely broad in their reach. Indeed, “[t]he stay provision of subsection (a)(1) is drafted so broadly that it encompasses all types of legal proceedings, subject only to the exceptions provided in section 362(b)”. 3 Collier on Bankruptcy ¶ 362.03[3] (2020). Relatedly, section 362(a)(6) stays any act to collect, assess or recover a prepetition claim against the debtor. “The wording of this provision is somewhat similar to that of section 362(a)(1) but the provision applies to any “act” whether or not that act is related to an “action” or a “proceeding.” *Id.*

37. The automatic stay “is one of the fundamental debtor protections provided by the bankruptcy laws, designed to relieve the financial pressures that drove [the] debtors into bankruptcy” by “afford[ing] [the] debtors a breathing spell from the collection process and enabl[ing] them to attempt a repayment or reorganization plan to satisfy existing debt.” *E. Refractories Co. v. Forty Eight Insulations Inc.*, 157 F.3d 169, 172 (2d Cir. 1998) (citations omitted). The automatic stay is designed to “prevent[] disparate actions against debtors and protect[] creditors in a manner consistent with the bankruptcy goal of equal treatment, by ensuring that no creditor receives more than an equitable share of the bankrupt’s estate.” *Lincoln Savings Bank, FSB v. Suffolk Cnty. Treasurer (In re Parr Meadows Racing Ass’n., Inc.)*, 880 F.2d 1540, 1545 (2d Cir. 1989).

38. Setting aside the historical transgressions associated with its refusal to perform under the Facility Agreement, G4S’s recent legal activity in Ecuador constitutes a clear violation of the automatic stay. It’s initiation of a mediation proceeding, and announced intention to file a formal

lawsuit and attach the Debtors' local bank accounts each run contrary to the unambiguous mandates of section 362(a)(1), (3) and (6) of the Bankruptcy Code.

39. Moreover, granting a preliminary injunction here will both further the overarching doctrinal goal of preserving the *status quo* and ensure the fair and equitable treatment of all of the Debtors' creditors. The sole motivation behind G4S's actions here is a desire to recover on its prepetition claim. Preliminarily enjoining all present and future collection-related activity will do nothing more than ensure that G4S's prepetition claims are treated in accordance with the Bankruptcy Code and not afforded any unwarranted preference. Entry of the requested relief here simply does no harm.

40. For the foregoing reasons the Debtors submit that entry of a temporary restraining order and preliminary injunction in this matter is necessary and warranted.

RESERVATION OF RIGHTS

41. 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, or (ii) a waiver of the Debtors' or any party-in-interest's rights to dispute any such claim. The Debtors expressly reserve their right to assert that any action against the Debtors is subject to the automatic stay.

NOTICE

42. Notice of this Motion has been or will be given to the following parties or, in lieu thereof, to their counsel, if known: (a) G4S; (b) the Standard Parties (as defined in the *Order Implementing Certain Case Management and Notice Procedures* [Docket No. 47]); and (c) any party that has requested service pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no further notice need be given.

NO PRIOR REQUEST

43. No prior request for the relief sought herein has been made by the Debtors to this or to any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court grant the Motion in its entirety and (i) enter an order, substantially in the form attached hereto as **Exhibit A**, temporarily restraining G4S, together with its affiliates, agents, attorneys, representatives and employees, from (a) commencing or continuing any judicial, administrative or other action or proceeding against the Debtors related to its alleged prepetition claim; (b) undertaking any efforts to recover or collect on its alleged prepetition claim, or (y) seeking to seize, control or otherwise possess property of the Debtors' estates on any basis; (ii) after full consideration of the merits, enter a preliminary injunction, substantially in the form attached hereto as **Exhibit B**, enjoining G4S from taking any of the foregoing actions pending outcome of this adversary proceeding; and (iii) grant such other and further relief as the Court may deem just and proper.

Dated: July 14, 2020

MILBANK LLP

/s/ Alan Stone

Dennis F. Dunne

Evan R. Fleck

Alan Stone

55 Hudson Yards

New York, NY 10001-2163

Telephone: (212) 530-5000

Facsimile: (212) 530-5219

-and-

Gregory A. Bray

2029 Century Park East, 33rd Floor

Los Angeles, CA 90067

Telephone: (424) 386-4000

Facsimile: (213) 629-5063

Counsel for Debtors and

Debtors-In-Possession

Exhibit A

Proposed Order – Temporary Restraining Order

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

-----X
In re: : Chapter 11
:
AVIANCA HOLDINGS S.A., *et al.*, : Case No. 20-11133 (MG)
:
Debtors.¹ : (Jointly Administered)
:
-----X
AVIANCA HOLDINGS S.A., *et al.*, :
:
Plaintiffs. :
v. :
: Adv. Proc. _____
G4S FACILITY MANAGEMENT CIA. LTDA. :
And G4S SECURE SOLUTIONS :
INTERNATIONAL INC., :
:
Defendants. :
-----X

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a temporary restraining order against G4S

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

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

(this “Order”); and this Court having jurisdiction over this matter pursuant to 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 this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted to the extent set forth herein.
2. G4S and its affiliates, agents, attorneys, representatives and employees, are hereby temporarily restrained and enjoined from, in any manner and wherever located, (i) commencing or continuing any judicial, administrative or other action or proceeding against the Debtors related to its alleged prepetition claim; (ii) undertaking any efforts to recover or collect on its alleged prepetition claim, or (iii) seeking to seize, control or otherwise possess property of the Debtors’ estates.
3. G4S is hereby ordered to show cause, on **July __, 2020**, why the Court should not preliminarily enjoin G4S from (a) commencing or continuing any judicial, administrative or other

action or proceeding against the Debtors related to its alleged prepetition claim; (b) undertaking any efforts to recover or collect on its alleged prepetition claim, or (c) seeking to seize, control or otherwise possess property of the Debtors' estates.

4. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, made applicable to these Chapter 11 Cases by Bankruptcy Rule 7065, no notice to any person is required prior to entry of this Order.

5. Pursuant to Bankruptcy Rule 7065, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived.

6. This Order is without prejudice to the right of the Debtors to seek additional relief under applicable provisions of the Bankruptcy Code

7. This Order shall be immediately effective and enforceable upon its entry.

8. This Order shall remain in full force and effect until further order of this Court.

9. The Debtors are hereby authorized and empowered to take any action or perform any act necessary to implement and effectuate the terms of this Order.

10. G4S Secure Solutions International Inc. shall direct and require G4S Facility Management Cia. Ltda. to comply with the terms of this Order in all respects.

11. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order.

Dated: _____, 2020

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Order – Preliminary Injunction

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

-----X	:	
In re:	:	Chapter 11
	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:	Case No. 20-11133 (MG)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
-----X	:	
AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:	
	:	
Plaintiffs.	:	
	:	
v.	:	Adv. Proc. _____
	:	
G4S FACILITY MANAGEMENT CIA. LTDA.	:	
And G4S SECURE SOLUTIONS	:	
INTERNATIONAL INC.,	:	
	:	
Defendants.	:	
-----X	:	

PRELIMINARY INJUNCTION

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a preliminary injunction against G4S (this

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

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

“Order”); and this Court having jurisdiction over this matter pursuant to 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 this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. G4S and its affiliates, agents, attorneys, representatives and employees, are hereby preliminarily enjoined from, in any manner and wherever located, (i) commencing or continuing any judicial, administrative or other action or proceeding against the Debtors related to its alleged prepetition claim; (ii) undertaking any efforts to recover or collect on its alleged prepetition claim, or (iii) seeking to seize, control or otherwise possess property of the Debtors’ estates.
3. Notice of the Motion and this Order is good and sufficient.
4. Pursuant to Bankruptcy Rule 7065, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived.

5. This Order is without prejudice to the right of the Debtors to seek additional relief under applicable provisions of the Bankruptcy Code

6. This Order shall be immediately effective and enforceable upon its entry.

7. This Order shall remain in full force and effect until further order of this Court.

8. The Debtors are hereby authorized and empowered to take any action or perform any act necessary to implement and effectuate the terms of this Order.

9. G4S Secure Solutions International Inc. shall direct and require G4S Facility Management Cia. Ltda. to comply with the terms of this Order in all respects.

10. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order.

Dated: _____, 2020

UNITED STATES BANKRUPTCY JUDGE

Exhibit C

Galindo Declaration

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

-----X	
In re:	: Chapter 11
AVIANCA HOLDINGS S.A., <i>et al.</i> ,	: Case No. 20-11133 (MG)
Debtors. ¹	: (Jointly Administered)
-----X	
AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:
Plaintiffs.	:
v.	: Adv. Proc. _____
G4S FACILITY MANAGEMENT CIA. LTDA.	:
And G4S SECURE SOLUTIONS	:
INTERNATIONAL INC.,	:
Defendants.	:
-----X	

**DECLARATION OF RICHARD GALINDO
IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, Richard Galindo, hereby declare pursuant to 28 U.S.C. § 1746 as follows:

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

1. I am the General Director of the legal department of Avianca Holdings S.A., one of the above-captioned debtors and debtors-in-possession (each, a “Debtor” and, collectively, the “Debtors”), and have served in this position since 2017. In this capacity, I am familiar with the Debtors’ day-to-day operations, business and financial affairs.

2. I submit this declaration in support of the Debtors’ *Motion for Temporary Restraining Order and Preliminary Injunction* (the “Motion”), which was filed concurrently herewith.

3. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my supervision, or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors and the airline industry as a whole. If called upon to testify, I would testify competently to the facts set forth in this declaration.

4. On November 19, 2018, the Debtors entered into the Facility Agreement² with G4S.

5. G4S has indicated that it holds a prepetition claim on account of services provided under the Facility Agreement in an approximate amount of \$143,000.

6. On May 12, 2020, G4S notified certain employees of the Debtors’ of its intention to suspend performance under the Facility Agreement unless and until a portion of its prepetition claim was paid in full.

7. On May 18, 2020, employees working under my supervision responded to G4S by delivering the First Notice, which included a copy of the Automatic Stay Order. A true and correct English language copy of the First Notice is attached to the Motion as Exhibit D. The First Notice

² All terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

was drafted in concert with counsel, in English, and subsequently translated into Spanish immediately prior to delivery.

8. On June 3, 2020, G4S delivered the Termination Notice to my team. A true and correct certified English translation of the Termination Notice is attached to the Motion as Exhibit E.

9. On June 9, 2020, employees from the Debtors' procurement department responded to the Termination Notice by delivering the Second Notice, which was drafted by external counsel and employees working under my supervision. A true and correct copy of the Second Notice is attached to the Motion as Exhibit F.

10. In early April of 2020, the Debtors began preparing to resume their domestic passenger operations in Ecuador. This initiative is ongoing as of the date hereof, with the Debtors recommencing the operation of certain domestic flights on June 15, 2020.

11. The resumption of passenger operations in Ecuador represents a key component of the Debtors' early stage restructuring efforts and presently constitutes the Debtors most significant source of revenues from scheduled passenger flights.

12. Following delivery of the Second Notice, G4S continued to refuse to perform under the Facility Agreement and Avianca was compelled to hire an alternative service provider.

13. On June 29, 2020, the Debtors were notified of G4S's demand for a mediation hearing before The Center of Arbitration and Mediation of the Chamber of Commerce of Quito, Ecuador, concerning its alleged prepetition claim.

14. On July 2 and July 8, 2020, The Center of Arbitration and Mediation of the Chamber of Commerce of Quito, Ecuador conducted the requested mediation hearing in two separate sessions.

15. At the hearing, G4S stated its intention to formally commence litigation in Ecuador against the Debtors and to seek attachment of the Debtors' local bank accounts.

16. The Debtors' use many of their accounts in Ecuador to fund local payroll, pay critical vendors and generally support their local operations.

17. Defending foreign litigation during these Chapter 11 Cases will cause irreparable harm by distracting the Debtors' employees and permanently consuming estate resources.

18. The attachment of the Debtors' bank accounts in Ecuador or the seizure of funds therein will cause irreparable harm by inhibiting the Debtors from funding their local operations and timely satisfying various financial obligations.

19. Immediate entry of a temporary restraining order is necessary to prevent and avoid each form of irreparable harm described above. Thus, as contemplated by Local Bankruptcy Rule 9077-1, proceeding by notice of motion is neither practicable nor ensured to protect the Debtors from such irreparable harm.

20. No previous application for the same or similar relief has been made by the Debtors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Date: July 14, 2020

/s/ Richard Galindo
Richard Galindo
General Director, Avianca
Legal Department

Exhibit D

First Notice

Milbank

ALAN STONE

Partner

55 Hudson Yards | New York, NY 10001-2163

T: 212.530.5285

astone@milbank.com | milbank.com

May 18, 2020

VIA EMAIL

Esteban Ortiz

Administrative Coordinator

G4S FACILITY MANAGEMENT CIA. LTDA.

Esteban.ortiz@ec.g4s.com

Andres Ochoa

andres.ochoa@ec.g4s.com

Re: Agreement for Providing Facility Management Services in Ecuador No. 193. In re Avianca Holdings S.A., *et al.*, Case No. 20-11133 (Bankr. S.D.N.Y.)

We are in receipt of your email dated May 12, 2020 regarding the suspension of services under the Agreement for Providing Facility Management Services in Ecuador No. 193.

Please be advised that we are counsel to Avianca Holdings S.A. and certain of its affiliates set forth on **Exhibit A** hereto (collectively, the “Debtors”). On May 10, 2020, the Debtors commenced chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). The Chapter 11 Cases are being jointly administered for procedural purposes only under Case No. 20-11133. All further pleadings and other papers shall be filed in, and all further docket entries shall be made in, Case No. 20-11133.

Upon the filing of a chapter 11 case, a self-effectuating stay and injunction (the “Automatic Stay”) immediately comes into effect, which prohibits and invalidates a wide range of activity related to the Debtors. On May 11, 2020, out of an abundance of caution, the Debtors sought, and the Bankruptcy Court entered, an Order reiterating the protections of the Automatic

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LONDON | MUNICH | BEIJING | HONG KONG | SEOUL | SINGAPORE | TOKYO

Stay and approving a form of notice (the “Notice”) related thereto. The Notice is attached to this letter as **Exhibit B**.

In accordance with the Automatic Stay, and otherwise pursuant to sections 362 and 365 of the Bankruptcy Code, all persons are enjoined from terminating or modifying any contract with the Debtors, notwithstanding any provision or applicable law that permits such contract to be terminated based upon the insolvency or financial condition of the Debtors. Moreover, in accordance with the Supreme Court of the United States’ decision in *N.L.R.B. v. Bildisco & Bildisco*, and its progeny, each contract counterparty is precluded from enforcing the terms of such contract against the Debtors unless and until it has been formally assumed. The effect of these authorities is such that all parties must continue to perform and comply with contractual obligations owed to the Debtors throughout the pendency of these Chapter 11 Cases unless instructed otherwise.

The Automatic Stay also prohibits, among other things, (i) commencing or continuing certain litigation or other judicial or administrative proceedings against a Debtor, (ii) creating or enforcing a lien against the Debtors’ property, (iii) any attempt to take possession of or exercise control over any of the Debtors’ assets or property, of any nature whatsoever, located anywhere in the world, and (iv) any other action to enforce or collect pre-bankruptcy claims against the Debtors. The Automatic Stay is extremely broad in scope, applies to almost any type of formal or informal action taken against any Debtor or its property, and stays all such activity throughout the world.

As further detailed in the Notice, any violation of section 362 or 365 of the Bankruptcy Code is punishable as contempt of court and the Debtors hereby reserve their rights to exercise all rights and remedies in connection therewith. Please govern yourself accordingly.

Please contact me if you have any questions.

Sincerely,

/s/ Alan Stone
Alan Stone

Encl.

Exhibit A

1. Aero Transporte de Carga Unión, S.A. de C.V.
2. Aeroinversiones de Honduras, S.A.
3. Aerovías del Continente Americano S.A. Avianca
4. Airlease Holdings One Ltd.
5. America Central (Canada) Corp.
6. America Central Corp.
7. AV International Holdco S.A.
8. AV International Holdings S.A.
9. AV International Investments S.A.
10. AV International Ventures S.A.
11. AV Investments One Colombia S.A.S.
12. AV Investments Two Colombia S.A.S.
13. AV Taca International Holdco S.A.
14. Avianca Costa Rica S.A.
15. Avianca Holdings S.A.
16. Avianca Leasing, LLC
17. Avianca, Inc.
18. Avianca-Ecuador S.A.
19. Aviaservicios, S.A.
20. Aviateca, S.A.
21. Avifreight Holding Mexico, S.A.P.I. de C.V.
22. C.R. Int'l Enterprises, Inc.
23. Grupo Taca Holdings Limited
24. International Trade Marks Agency Inc.
25. Inversiones del Caribe, S.A.
26. Isleña de Inversiones, S.A. de C.V.
27. Latin Airways Corp.
28. Latin Logistics, LLC
29. Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.)
30. Regional Express Américas S.A.S.
31. Ronair N.V.
32. Servicio Terrestre, Aereo y Rampa S.A.
33. Servicios Aeroportuarios Integrados SAI S.A.S.
34. Taca de Honduras, S.A. de C.V.
35. Taca de México, S.A.
36. Taca International Airlines S.A.
37. Taca S.A.
38. Tampa Cargo S.A.S.
39. Technical and Training Services, S.A. de C.V.

Exhibit B

[Omitted]

Exhibit E

Termination Notice



Quito-Ecuador
General Roca N33-92 & Bosmediano,
Tel: 2260016 / 6020433 / 6000175
www.g4s.ec

On the basis of the principles of the Electronic Commerce Act, this official notification is likewise sent to the email addresses:

patricia.chiriboga@avianca.com and diego.uquillas@avianca.com

Quito D.M., 03 June 2020
Document No. 027-legalg4s-2020

Dr
Patricia Chiriboga
General Manager
AVIANCA ECUADOR S.A.
Quito.

Mr
Diego Uquillas
Maintenance Inspector
AVIANCA ECUADOR S.A.
Quito.

Re: Contract Termination Notification

Dear Patricia,

On May 18, 2020, I received from the Strategic Supply Manager Mr Juan Guillermo Alzate, an email stating that Avianca has voluntarily filed for Chapter 11 under the United States Bankruptcy Code. The aforementioned document confirms various aspects for information purposes, although no indication is given with regard to the payments pending for our services as detailed below:

AVIANCA ECUADOR S.A.		
Billing Month	Value	Due at 90 days
January/2020	\$28,519.56	April 14
February/2020	\$36,596.77	May 14
March/2020	\$29,892.28	June 6
April/2020	\$26,970.30	July 15
TOTAL	\$121,978.91	

Although we regret and are sympathetic towards the situation being experienced by such a prominent airline as Avianca, we must also look after the interests of G4S

Facility Management Compañía Limitada, since as may be seen, we have unpaid services dating back to January 2020.

We respect the American processes and laws with regard to Chapter 11, but as agreed in the FACILITY MANAGEMENT SERVICES CONTRACT that we signed jointly on November 19, 2018, and which, by the way, constitutes the "Law for the Parties", we freely and voluntarily agreed as to the parameters governing this provision, and even the applicable jurisdiction. Therefore, on the basis of Clause 15(b), we hereby formally serve 90 days' notice of termination of the contract.

With regard to the services we have been providing, and given the payment default which has occurred, we avail ourselves of paragraph five of Clause Five, which provides and entitles us to suspend these services, notwithstanding the late-payment interest surcharge. This suspension of services will take effect on June 15, 2020, unless prior to the stated date the overdue payments corresponding to the invoices issued in January and February 2020 are settled, amounting to **USD 65,116.33**, in which case we would continue to provide our services until the date of termination of the contract, subject to further suspensions in the event of non-fulfillment of payments as they fall due.

We confirm our willingness to provide the services enabling you to continue your operations, but this is unsustainable without the basic cash flow required to cover the costs of the Project. It should also be borne in mind that under local legislation, our services are governed under the principles of Constitutional Mandate No. 8, establishing principles of co-responsibility even in the case of labor rights.

This notice of suspension of services and termination of the contract is served without prejudice - if necessary - to the commencement of other actions inherent in the recovery of the overdue payments, and other rights which we enjoy.

Yours sincerely,

Mr Andrés Ochoa C. (Lawyer)

General Manager

G4S FACILITY MANAGEMENT COMPAÑÍA LIMITADA



Ubiquitous Reporting, Inc.
61 Broadway, Ste 1400
New York, NY 10006
Tel.: (212) 346.6666
Fax: (888) 412.3655

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

CERTIFICATE OF TRANSLATION

This is to certify that the accompanying, to the best of my knowledge and belief, is a true and accurate translation into English, completed on July 13, 2020 of "G4S Termination Notice" originally written in Spanish.

Patrick Volpe

Patrick Volpe
Director of Production
Ubiquitous Reporting, Inc.

Sworn to and subscribed before me,
This July 13, 2020.

Steven J. Albert

Notary Public

STEVEN J. ALBERT Notary Public New York County State of New York Commission Expires 1/31/2023

Exhibit F

Second Notice

Milbank

ALAN STONE

Partner

55 Hudson Yards | New York, NY 10001-2163

T: 212.530.5285

astone@milbank.com | milbank.com

June 9, 2020

VIA EMAIL

Esteban Ortiz
Coordinador Administrativo
G4S FACILITY MANAGEMENT CIA. LTDA.
Esteban.ortiz@ec.g4s.com

Andrés Ochoa
andres.ochoa@ec.g4s.com

Re: Contrato de Prestación de Servicios de Facility Management (the “Services Agreement”)- In re Avianca Holdings S.A., *et al.*, Case No. 20-11133 (Bankr. S.D.N.Y.)

Dear Sirs,

We are in receipt on your letter dated May 12, 2020 and have responded by formally advising you of the breadth and effect of the Automatic Stay, which prohibits, among other things, the termination of a contractual relationship with any debtor entity or the modification of the contractual terms in force. Nonetheless, we received your letter dated June 3, 2020, where G4S insists on (i) unilaterally terminating the Services Agreement, and (ii) suspending the services effective June 15, 2020.

As a response, we had a conversation on June 3, 2020 with your Regional General Counsel, where we insisted on the applicability of the Automatic Stay and urged G4S to honor the terms of the Services Agreement. We also noted that even if the Services Agreement is governed by the laws of Ecuador, G4S is a multinational company with presence in the US that is subject to the Automatic Stay.

MILBANK LLP

NEW YORK | LOS ANGELES | WASHINGTON, D.C. | SÃO PAULO | FRANKFURT
LONDON | MUNICH | BEIJING | HONG KONG | SEOUL | SINGAPORE | TOKYO

However, G4S has failed to formally respond and has also continued to fail to abide by the contractual terms of the Services Agreement currently in place. As you are aware, Avianca will restart operations in Ecuador on June 15, 2020, for which the contractual services of G4S are necessary from June 8, 2020 at the latest.

In light of the urgency of this matter and your failure to comply with applicable U.S. law, we are writing to again reiterate our position that the Automatic Stay applies to G4S, and to express an intention to pursue a motion for civil contempt if G4S remains unwilling to promptly fulfill its contractual obligations. Please take notice that the reliability of restarting Avianca's operation in Ecuador may be substantially affected by your position.

Lastly, please note the Avianca values its relationship with G4S and intends to honor all monetary and non-monetary contractual obligations owed to G4S throughout these chapter 11 cases. Indeed, to the extent G4S holds up its end of the bargain and does not otherwise seek to improperly modify the terms of its agreement, the debtors are obligated to, in turn, comply with all of its own contractual obligations, including any and all payment obligations.

The debtors will continue to perform under their contracts with G4S, and strongly urge G4S to do the same.

I encourage you to have your lawyers contact me at the phone number provided herein to discuss an amicable resolution.

Sincerely,

/s/ Alan Stone

Alan Stone