

**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> ,	: Case No. 20-11133 (MG)
	:
Debtors. ¹	: Jointly Administered
	:

x

**STIPULATION AND AGREED ORDER FOR LIMITED RELIEF FROM THE
AUTOMATIC STAY TO EFFECTUATE A SETOFF**

Avianca Holdings S.A., (“Avianca”) and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) and JPMorgan Chase Bank, N.A. (“JPM” and, together with the Debtors, the “Parties” and each a “Party”) hereby enter into this Stipulation and Agreed Order (this “Stipulation”) and stipulate and agree as follows:

RECITALS

WHEREAS, on May 10, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy”

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s tax identification number (as applicable), are: 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); Tacade 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.



Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”), and such cases are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure [Docket No. 34] (collectively, the “Chapter 11 Cases”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to section 107(a) and 1108 of the Bankruptcy Code.

WHEREAS, JPM has issued certain bilateral letters of credit in favor of the Debtors (the “Letters of Credit”).

WHEREAS, the Debtors maintain a bank account with JPM, account number ending *8356 (the “Cash Collateral Account”), in which the Debtors have deposited cash for purposes of securing the Debtors’ reimbursement obligations under the Letters of Credit (such cash, the “LC Cash Collateral”).

WHEREAS, on June 9, 2020, this Court entered the *Amended Final Order Pursuant to Sections 105(a), 345, 363, and 364 of the Bankruptcy Code (I) Authorizing Debtors to (A) Maintain and Use Existing Cash Management Systems, Bank Accounts and Business Forms; (B) Continue to Engage in Intercompany Transactions and Afford Administrative Expense Priority to Intercompany Claims; (C) Continue Payment of Service Charges; (II) Waiving Compliance with Section 345 of Bankruptcy Code; and (III) Granting Related Relief* [Docket No. 385] (the “Cash Management Order”).

WHEREAS, paragraph 5 of the Cash Management Order provides that, to the extent of any draw under a Letter of Credit, JPM may seek relief from the automatic stay with or without the Debtors’ consent as it relates to funds in the Cash Collateral Account.

WHEREAS, on September 10, 2020, JPM funded \$700,000 under a Letter of Credit (ending number: 259) (the “Specified Letter of Credit”), and such funding is subject to associated fees and charges totaling approximately \$700.

WHEREAS, Debtor Aerovias del Continente Americano Sa Avianca (“Avianca CASA”) is the obligor under the Specified Letter of Credit.

IT IS HEREBY STIPULATED AND AGREED AND UPON APPROVAL BY THE BANKRUPTCY COURT OF THIS STIPULATION, THE FOLLOWING IS SO ORDERED:

1. This Stipulation shall only be effective and enforceable upon its approval and entry by this Court on the docket for these Chapter 11 Cases, and then it shall be immediately effective and enforceable.

2. The foregoing recitals are hereby incorporated by reference into this Stipulation.

3. The automatic stay under section 362 of the Bankruptcy Code is hereby modified solely to permit JPM to setoff \$700,700 from the Cash Collateral Account on account of Avianca CASA’s reimbursement obligations to JPM for the Specified Letter of Credit. Upon entry of this Stipulation, JPM shall be authorized to transfer \$700,700 from the Cash Collateral Account for payment, in satisfaction of Avianca CASA’s reimbursement obligation for the September 10, 2020 draw on the Specified Letter of Credit.

4. The Parties shall not alter or modify this Stipulation except by an instrument in writing executed by all Parties hereto or an order that this Court may enter on the docket for these Chapter 11 Cases.

5. This Stipulation and any claims arising out of or related directly or indirectly to this Stipulation shall be construed and enforced in accordance with and governed by the laws of

the State of New York without regard to conflict of laws principles, except to the extent the provisions of the Bankruptcy Code and/or the Federal Rules of Bankruptcy Procedure are applicable.

6. This Stipulation may be executed and delivered (including by facsimile or portable document format transmission) in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed will be deemed to be an original, but all of which taken together will constitute one and the same agreement.

7. The undersigned hereby represent and warrant that they have full authority to executed this Stipulation on behalf of the respective Parties and that the respective Parties have full knowledge of and have consented to this Stipulation.

8. The Court shall retain jurisdiction over all disputes arising under or related to this Stipulation.

9. Each of the Parties do not admit any liability of any kind whatsoever by executing this Stipulation and do not waive and expressly reserve all rights available under contract, at equity or in law. Nothing in this Stipulation shall modify or waive any rights or remedies that JPM has, or any obligations the Debtors may have, in respect of the Letters of Credit, under the Cash Management Order or otherwise, and all such rights, remedies and obligations shall remain in full force and effect.

10. The terms of this Stipulation are binding on the Parties and their parents, subsidiaries, affiliates, successors, agents and assigns, including any trustee or estate representative hereafter appointed in these Chapter 11 Cases.

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Dated: New York, New York
September 17, 2020

By: /s/ Evan R. Fleck

Dennis F. Dunne
Evan R. Fleck
MILBANK LLP
55 Hudson Yards
New York, NY 10001
T: (212) 530-5000
F: (212) 530-5219
ddunne@milbank.com
efleck@milbank.com

*Counsel for the Debtors and Debtors in
Possession*

By: /s/ Sandy Qusba

Sandy Qusba, Esq.
Nicholas A. Baker, Esq.
Jamie Fell, Esq.
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, NY 10017
Telephone: (212) 455-2000
Facsimile: (212) 455-2502
squsba@stblaw.com
nbaker@stblaw.com
jamie.fell@stblaw.com

Counsel for JPMorgan Chase Bank, N.A.

SO ORDERED.

Signed: _____

MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE